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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, [redacted] 1914

No. [redacted]452

THE UNITED STATES, APPELLANT,

vs.

THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED APRIL 18, 1914.

(24174)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 1023.

THE UNITED STATES, APPELLANT,

vs.

THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

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1 *The United States of America to The Terminal Railroad Association of St. Louis; The St. Louis Merchants' Bridge Terminal Railway Company; The Wiggins Ferry Company; The St. Louis Bridge Company; The St. Louis Merchants' Bridge Company; The Missouri, Kansas & Texas Railway Company; The St. Louis & San Francisco Railway Company; The Chicago & Alton Railway Company; The Baltimore & Ohio Southwestern Railroad Company; The Illinois Central Railroad Company; The St. Louis, Iron Mountain & Southern Railway Company; The Chicago, Burlington & Quincy Railway Company; The St. Louis, Vandalia & Terre Haute Railroad Company; The Wabash Railroad Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; The Louisville & Nashville Railroad Company; The Southern Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Missouri Pacific Railway Company; The Central Trust Company of New York; A. A. Allen; S. M. Felton; A. J. Davidson; W. M. Green; J. T. Harahan; C. S. Clarke; H. Miller; Benjamin McKean; Joseph Ramsey; George E. Evans; C. E. Schaff; T. C. Powell; J. F. Stevens; A. G. Cochran; W. S. McChesney; Julius Walsh; V. W. Fisher; and S. D. Webster, greeting:*

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, wherein The United States of America is appellant and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the honorable judge of the District Courts of the United States within and for the Eastern District of Missouri, this 27th day of March, in the year of our Lord one thousand nine hundred and fourteen.

WALTER H. SANBORN,
United States Senior Circuit Judge.

Mch. 27th, 1914. Service of this writ is hereby acknowledged & waived.

T. M. PEIRCE,
H. S. PRIEST, *for Defts.*

2 (Indorsed:) No. 5250. United States District Court, Eastern Division of the Eastern Judicial District of Missouri. United States of America, complainant, vs. Terminal Railroad Association of St. Louis, et al., defendants. Citation. Filed Mar. 27, 1914. W. W. Nall, clerk.

3 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

Be it remembered that heretofore, to wit, on the 4th day of April, 1914, in a cause pending in the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, wherein United States of America is complainant and Terminal Railroad Association of St. Louis and others are defendants, in equity, No. 5250, there was filed by said complainant a praecipe for a transcript of the record on appeal of said cause to the Supreme Court of the United States, which said praecipe, together with the marshal's return of service of the same, is in words and figures, as follows, to wit:

4 *Praecipe for record on appeal.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS; ST. Louis Merchants' Bridge Terminal Railway Company; Wiggins Ferry Company; St. Louis Bridge Company; St. Louis Merchants' Bridge Company; Missouri, Kansas & Texas Railway Company; St. Louis & San Francisco Railway Company; The Chicago & Alton Railway Company; Baltimore & Ohio Southwestern Railroad Company; Illinois Central Railroad Company; St. Louis, Iron Mountain & Southern Railway Company; Chicago, Burlington & Quincy Railway Company; St. Louis, Vandalia & Terre Haute Railroad Company; The Wabash Railroad Company; Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Louisville & Nashville Railroad Company; Southern Railway Company; The Chicago, Rock Island & Pacific Railway Company; The Missouri Pacific Railway Company; Central Trust Company of New York; A. A. Allen; S. M. Felton; A. J. Davidson; W. M. Green; J. T. Harahan; C. S. Clarke; H. Miller; Benjamin McKean; Joseph Ramsey; George E. Evans; C. E. Schaff; T. C. Powell; J. F. Stevens; A. G. Cochran; W. S. McChesney; Julius Walsh; V. W. Fisher; and S. D. Webster, defendants.

To the clerk of the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri:

You will incorporate into the transscript on appeal in the above-entitled cause only the following portions of the record in said cause.

5

I.

Mandate of the Supreme Court of the United States, filed herein June 3, 1912.

Summary as follows:

II.

The above-entitled cause was duly brought on for the entry of a decree herein in accordance with said mandate of the Supreme Court of the United States, filed before the court in the city of St. Louis, in said Eastern Division of the Eastern Judicial District of Missouri, on the 25th day of February, 1913, before the Honorable Walter H. Sanborn, circuit and presiding judge of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, and Honorables William C. Hook and Walter I. Smith, circuit judges of said judicial circuit, sitting in said District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, presiding, and the complainant appearing by the Honorable George W. Wickersham, Attorney General, and by Edward C. Crow, Esq., of counsel for complainant, and come also the said defendants by H. S. Priest, Esq., their solicitor, the following proceedings were had:

III.

Motion for filing mandate and for entry of interlocutory decree.

IV.

Form of said interlocutory decree submitted by counsel for complainant.

V.

Order of court on said motion for interlocutory decree.

VI.

Reply by defendants to said motion for interlocutory decree.

6

VII.

Interlocutory decree on mandate.

VIII.

Opinions of court.

IX.

Exceptions filed by complainant on motion filed.

X.

Plan of reorganization filed by defendants.

XI.

Motion for entry of final decree by complainant and form for such decree submitted, and submission of cause, and order thereon.

XII.

Final decree and opinion.

XIII.

Petition for appeal and order of appeal.

XIV.

Assignment of errors.

XV.

Citation and waiver of service.

XVI.

Election as to printing record.

XVII.

Praecipe for record on appeal.

EDWARD C. CROW,
Special Assistant to the Attorney General.

MARSHAL'S RETURN.

UNITED STATES OF AMERICA,
Eastern District of Missouri, ss:

7 I do hereby certify that at the city of St. Louis, Missouri, in the Eastern Judicial District of Missouri, on the 4th day of April, A. D. 1914, I executed this writ by delivering a copy

thereof to Henry S. Priest, Esquire, and T. M. Pierce, Esq., solicitors for the within-named defendants.

EDW. F. REGENHARDT, *U. S. Marshal.*
By O. A. KNEHANS, *Deputy.*

Which said papers, files, records, and proceedings in said praecipe enumerated are, respectively, in words and figures, as follows, to-wit:

8 *Mandate of Supreme Court of United States, filed June 3rd, 1912.*

UNITED STATES OF AMERICA, *ss:*

[SEAL] *The President of the United States of America to the honorable the judge of the District Court of the United States for the Eastern District of Missouri, greeting:*

Whereas lately in the Circuit Court of the United States for the Eastern District of Missouri, in a cause between the United States of America, complainant, and The Terminal Railroad Association of St. Louis et al., defendants, No. 5250, wherein the decree of the said Circuit Court, entered in said cause on the 6th day of June, A. D. 1910, is in the following words, viz:

"Whereas upon full argument and careful consideration of this case two of the judges of this court were of the opinion that the complainant should prevail, and two of the judges of this court were of the opinion that the defendants should prevail, and each of them is of the same opinion still, and the Supreme Court of the United States has dismissed the certificate of this division of opinion and has remanded this case to this court, with direction to proceed in conformity with the laws of the United States;

"Whereas Honorable Charles A. Houts, United States attorney for the Eastern District of Missouri, has made a motion on behalf of the complainant that this court listen to a reargument of this case, and the judges are unanimously of the opinion that further argument thereof would be futile;

"And whereas the complainant can not prevail because only two of the judges are of the opinion that it is entitled to any relief, while two are of the opinion that it is entitled to no relief.

"It is hereby ordered that the motion for a reargument of this case be, and the same is hereby, denied and that the bill of the complainant be, and it is hereby, dismissed.

9 "WALTER H. SANBORN,
"WILLIS VAN DEVANTER,
"WILLIAM C. HOOK,
"ELMER B. ADAMS,
"*Circuit Judges.*"

as by the inspection of the transcript of the record of the said Circuit Court, which was brought into the Supreme Court of the United States by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

And whereas, in the present term of October, in the year of our Lord one thousand nine hundred and eleven, the said cause came on to be heard before the said Supreme Court on the said transcript of record and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said Circuit Court in this cause be, and the same is hereby, reversed.

And it is further ordered that this cause be, and the same is hereby, remanded to the District Court of the United States for the Eastern District of Missouri for further proceedings to be had therein in conformity with the opinion of this court.

APRIL 22, 1912.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the Honorable Edward D. White, Chief Justice of the United States, the 23d day of May, in the year of our Lord one thousand nine hundred and twelve.

JAMES H. MCKENNNEY,
Clerk of the Supreme Court of the United States.

(Endorsed:) Filed June 3rd, 1912. W. W. Nall, Clerk.

10

SUMMARY.

The above-entitled cause was duly brought on for the entry of a decree herein in accordance with said mandate of the Supreme Court of the United States filed before the court in the city of St. Louis, in said Eastern Division of the Eastern Judicial District of Missouri, on the 25th day of February, 1913, before the Honorable Walter H. Sanborn, circuit and presiding judge of the United States Circuit Court of Appeals for the Eighth Judicial Circuit, and Honorables William C. Hook and Walter I. Smith, circuit judges of said Judicial Circuit, sitting in said District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, presiding, and the complainant appearing by the Honorable George W. Wickersham, Attorney General, and by Edward C. Crow, Esq., of counsel for complainant, and come also the said defendants, by H. S. Priest, Esq., their solicitor, the following proceedings were had:

11 *Motion for filing of mandate and for entry of interlocutory decree.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

MOTION ASKING FOR FILING OF MANDATE AND ENTRY OF INTERLOCUTORY DECREE.

Now comes complainant, United States of America, and shows to honorable circuit judges of the Eighth Judicial Circuit, that the above-entitled cause was commenced in what was then the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, on the 25th day of November, 1905; a commissioner appointed and testimony taken and reported to above-named court; that the case was upon certification by the Attorney General under the expedition act, certified to the circuit judges of the Eighth Judicial Circuit for hearing and was argued and submitted to said above circuit judges, and after due consideration a decree was entered on June 6th, 1910, dismissing the complainant's petition.

The complainant appealed said cause to the Supreme Court of the United States; that the decree above mentioned was reversed, and the Supreme Court in its opinion filed says:

"These considerations lead to a reversal of the decree dismissing the bill.

"This is accordingly adjudged and the case is remanded to the District Court with directions that a decree be there entered directing the parties to submit to the court within ninety days after receipt of mandate, a plan for the reorganization of the contract between the fourteen defendant railroad companies and the terminal
12 company, which we have pointed out as bringing the combination within the inhibition of the statute.

"First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

"Second. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

"Third. By eliminating from the present agreement between the terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the terminal company.

"Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then rebilling traffic destined to St. Louis or to points beyond.

"Fifth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to the District Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Seventh. To avoid any possible misapprehension the decree should also contain a provision that nothing therein shall *to*
13 taken to affect in anywise or at any time the power of the Interstate Commission over the rates to be charged by the terminal company or the mode of billing traffic passing over its lines or the establishing of joint through rates or routes over its line or any other power conferred by law upon such commission.

"Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree, the court will, after hearing the parties upon a plan for the dissolution of the combination between the terminal company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems and their future operations as independent systems as may be necessary, enjoining the defendants singly and collectively from any exercise of control or dominion over either of the said terminal systems or their related constituent companies, through lease, purchases or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends directly or indirectly, or from any future combination of the said systems in evasion of such decree, or any part thereof."

That on the 23rd day of May, 1912, the mandate of the Supreme Court was issued, and which said mandate is herewith presented and asked to be filed in this cause.

Complainant now therefore requests the court to make an order for filing of the mandate and the entry of a decree in pursuance of the direction contained in the opinion of the Supreme Court that justice may be done.

GEO. W. WICKERSHAM,
Attorney General.
EDWARD C. CROW,
Of Counsel for Complainant.

(Endorsed:) Filed Feby. 25, 1913. W. W. Nall, Clerk.

14 *Form of interlocutory decree submitted by counsel for complainant.*

In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

Interlocutory decree on mandate.

This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6th, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon
15 the transcript of the record, and having thereupon, on the 22d day of April, 1912, ordered, adjudged, and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be, and the same is hereby, reversed, and that said cause is remanded to this court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date the 23d day of May, 1912.

Now, therefore, in obedience to said mandate and in cognizance with the opinion of the Supreme Court of the United States, it is hereby ordered, adjudged, and decreed as follows:

That the complainant and the defendants herein, within ninety (90) days from the ——— day of May, 1912 (being ninety days from the receipt of the mandate in this case), shall submit to this court a plan upon which the complainant and the defendants herein shall have agreed for the reorganization of the contracts, agreements, arrangements, and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between the Terminal Railroad Association of St. Louis, Missouri, and its fourteen co-defendant railroads, or any one or more of them, and between said Terminal Railroad Association of St. Louis and any of its constituent, controlled, leased, operated, or related or associated corporations or companies, and between any one or more of the fourteen codefendant railroads of said Terminal Association and any constituent, leased, operated, or controlled or related or associated corporation or
16 company of any one of said fourteen codefendant railroad companies, and between said defendant railroads or any one or more of them, and between any one or more of said defendant railroad companies and any individual or individuals, and which

plan for the reorganization, use, and operation of the properties and terminal facilities of defendants shall provide:

First. For the removal of all clauses and provisions requiring unanimous consent of all the proprietary companies for the admission of any existing or future railroad to joint ownership and control and use of the terminal properties and facilities of the defendants and of their constituent, associated, related, controlled, leased, and operated corporations and companies.

Second. Accord definitely to any existing or future railroad company the specific right to admission to joint ownership and control and use of the combined terminal properties and facilities of the defendants upon such just and reasonable terms as will place the company seeking admission upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

Third. By providing definitely for and according the right to the use of the terminal properties and facilities of the defendants herein to any existing or future railroad company not wishing to become a joint owner, upon such reasonable and just terms and subject to such regulations as will, in respect of use, character, and cost of service, place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

17 Fourth. By providing that any disagreement between any company seeking to become a joint user or owner as in this decree provided for and the Terminal Railroad Association or the fourteen codefendants of the Terminal Railroad Association, and which disagreement shall arise after a final decree in this cause, may be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri, upon a petition in this cause being filed, and the orders, judgments, and decrees of said District Court therein shall be subject to review by appeal in the usual manner.

Fifth. By eliminating and removing all provisions and clauses restricting and confining or attempting to directly or indirectly restrict or confine the interstate traffic and commerce destined to St. Louis, Missouri, or originating in St. Louis, Missouri, or passing in any direction through St. Louis, Missouri, or through the St. Louis Railway Gateway, without regard to its origin or destination, to the use of the facilities and properties of the Terminal Railroad Association of St. Louis, and removing all provisions confining proprietary companies to the use of the properties and facilities of the Terminal Railroad Association.

Sixth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond. The defendant railroad companies shall bill direct to St. Louis, Missouri, all traffic destined to St. Louis, Missouri. The defendants shall not bill to East St. Louis, Illinois, or any other junction point, traffic

destined to St. Louis, Missouri, and then rebill said traffic to St. Louis, Missouri.

18 The defendants shall not bill to East St. Louis or other junction points traffic destined to pass through St. Louis, Missouri, to points beyond or through the St. Louis railway gateway, and then rebill the said traffic.

Traffic destined to pass through St. Louis, Missouri, or through the St. Louis Railway Gateway to points beyond, in any direction, shall be billed through to final destination.

Seventh. Said plan of reorganization shall abolish completely any special or so-called arbitrary charge upon traffic (commonly known as "the arbitrary") for the use of the terminal properties and facilities of the defendants, between the termini of the existing or future proprietary railroads of St. Louis, Missouri; East St. Louis, Illinois; Granite City, Madison, Venice, and Brooklyn, Illinois, and any such arbitrary charge for the use of the properties and facilities of the defendants between the termini of the proprietary railroads in the territory of the St. Louis railway gateway in the States of Illinois and Missouri; and in order to abolish completely the arbitrary charge above mentioned, the said plan for the reorganization and operation of defendants' properties and facilities shall provide such methods and means shall be used so that in the handling of traffic by the railroads of the defendants no methods or practices discriminating against the commerce of St. Louis, Missouri, either as to rates or service or in any other manner, shall be directly or indirectly used or permitted; and that in the transportation and handling of traffic by the defendants, the cities and towns of St. Louis, Missouri;

19 East St. Louis, Illinois; Madison, Granite City, Venice, and Brooklyn, Illinois, and the territory in the St. Louis Railway Gateway, shall be treated by the defendants, as to rates charged, service supplied, and facilities furnished, as one common commercial and business centre, and the cities and towns above named herein, and the territory of the St. Louis Railway Gateway shall be, as to traffic, treated as the St. Louis business district and one and the same rate shall apply to the traffic to and from each of the above named cities and towns and to the territory designated as the St. Louis Railway Gateway.

And said plan of reorganization shall eliminate and remove all provisions and clauses of contracts and agreements between the defendants or any of them or any constituent, controlled or leased or associated or operated corporations or companies, requiring the fixing and maintaining of any rates of toll or charges for the use of the terminal facilities and properties of the defendants between the termini of the existing or future proprietary railroads in St. Louis, Missouri; East St. Louis, Illinois; Granite City, Madison, Venice, and Brooklyn, Illinois, and between the termini of the proprietary railroads in the territory of the St. Louis railway gateway in the States of Missouri and Illinois, upon traffic originating in or destined

to St. Louis, Missouri, or passing through St. Louis, Missouri, or the St. Louis Railway Gateway in any direction, without regard to its origin or destination, and which charges in any way, directly or indirectly, discriminate against the traffic of St. Louis, Missouri, or the traffic passing through St. Louis, Missouri, or the St. Louis railway gateway.

20 And said plan of reorganization shall eliminate from the agreement between the Terminal Railroad Association of St. Louis and the several proprietary lines, executed October 1, 1889, and known as "Exhibit A," and from all other agreements of the defendants or any one or more of them, all provisions requiring the Terminal Railroad Association of St. Louis to fix rates of toll and charges for the use of the terminal facilities and properties of the defendants between the termini of the existing or future proprietary railroads in St. Louis, Missouri; East St. Louis, Illinois; Granite City, Madison, Venice, and Brooklyn, Illinois, and between the termini of the proprietary railroads in the territory of the St. Louis Railway Gateway in the States of Missouri and Illinois, upon traffic and commerce originating in St. Louis, Missouri, or destined to St. Louis, Missouri, or passing through St. Louis, Missouri, or the St. Louis Railway Gateway in any direction.

It is further ordered, adjudged, and decreed that the said agreement, if made between the complainant and the defendants, shall, and this decree is intended to order that the said agreement be fully and completely in accordance and in cognizance with the opinion and decree and order of the Supreme Court of the United States in this case.

21 *Order of court on motion for interlocutory decree.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, COMPLAINANT, *vs.* TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.	In equity. No. 5250.

Now at this day comes the United States of America, appearing by the Hon. George W. Wickersham, Attorney General, and by Edward C. Crow, Esq., of counsel for complainant, and come also the said defendants, appearing by H. S. Priest, Esq., their solicitor; and now the said complainant files and presents to the court a certified copy of the order of the Supreme Court of the United States entered January 6th, 1913, in the matter of the United States, petitioner, together with a waiver of the issuance of the writ of prohibition granted by the said order; and the said complainant further files and presents to the court a motion to vacate the order entered herein on September 3rd, 1912, together with a motion for the filing of the

mandate of the Supreme Court and for the entry of the interlocutory decree in the form now tendered; whereupon the court, after hearing the arguments of counsel for the respective parties, doth

Order that the said defendants be, and they are hereby, allowed five days from this date to file any objections and brief in opposition to the said form of interlocutory decree, and that the said complainant be, and it is hereby, allowed five days thereafter for reply thereunto; whereupon the said motions shall be taken as submitted to the court.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
Circuit Judges.

ST. LOUIS, *Feby. 25, 1913.*

(Endorsed:) Filed Feby. 25, 1913. W. W. Nall, Clerk.

22 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri. The United States of America, complainant, *vs.* The Terminal Railroad Association of St. Louis et al., defendants. Defendants' reply to motion for interlocutory decree. H. S. Priest and T. M. Pierce, attorneys for the defendants.

(Endorsed:) Filed Mar. 3, 1913. W. W. Nall, clerk.

23 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

Defendants' reply to motion for interlocutory decree.

In response to the motion of complaint for the entry of an interlocutory decree pursuant to the opinion and mandate of the Supreme Court herein, the defendants herein would respectfully represent and show unto your honors:

That heretofore, to wit, on June 3, 1912, the complainant filed the mandate of the Supreme Court in this cause, and thereupon filed the motion marked Exhibit No. 1 hereto, addressed to honorable district judge of this court, and accompanied the same with a draft of a proposed interlocutory decree, which is hereto attached and marked Exhibit 2.

24 That upon the presentation of said mandate said motion and said proposed drafts of interlocutory decree to Hon. David P. Dyer, district judge, then presiding, counsel for the defend-

ants protested that the honorable district judge then presiding was incapacitated to hear said motion, because, as appeared from the record, he had been of counsel for complainant in said cause, and that under the act of Congress commonly known as the "Expediting Act," the circuit judges of this circuit alone had authority to sit herein, the same theretofore having been certified under said act to them for trial; that said objection so made was then overruled, and thereafter his honor, Judge Dyer, appreciating his qualifications upon the ground of his previous relation to the cause, requested (without notice to defendants' counsel) his honor Judge Trieber to hear and determine said application, who, thereupon, without opportunity to counsel for defendants to discuss said motion and said draft of interlocutory order, entered upon said motion an interlocutory order, a copy of which is hereto attached as Exhibit No. 3.

That, upon the announcement of said interlocutory order, these defendants again suggested the want of authority of the district judge sitting alone in this cause to exercise the jurisdiction of this court therein, and said objection was again overruled.

That counsel for the complainant at all such times contended that said district judge had authority to hear and determine said matters.

That, thereupon and in accordance with said interlocutory decree, the defendant, the Terminal Railroad Association of St. Louis, and the other defendants prepared two separate plans, copies of which are hereto attached, marked Exhibits 4 and 5, respectively, and presented the same to his honor Judge Trieber for approval. Said plans were substantially the same, the difference being chiefly
25 in form and consisting in this—in one plan the fourth, fifth, and seventh paragraphs of the special directions contained in the opinion of the Supreme Court were to rest in injunction and not covenant of contract, while in the other they were to be incorporated in contract. The complainant filed objections to said plans, copy of which is hereto attached and marked Exhibit 6, and submitted a plan in their stead, which is copied herein as Exhibit No. 7.

The court, after hearing counsel for complainant and defendants, made an order approving a plan, copy of which order is hereto attached, marked Exhibit No. 8, which was fully executed by these defendants.

That upon the entry of the order prescribing the plan of reorganizing the contracts between the Terminal Railroad Association of St. Louis and the other defendants, the defendants presented to the court for its approval the form of a contract to be executed pursuant to said plan, which is attached hereto and marked Exhibit No. 9, which was approved by the court; and thereupon the defendants executed said contract, a copy of which is hereto attached and marked Exhibit No. 10, in accordance with said order, and presented the same to the court, with a draft of a final decree, a copy of which is hereto attached and marked Exhibit 11, and thereupon the complainant applied to the Supreme Court for a writ of prohibition to restrain his honor, Judge Trieber, from further proceeding in said cause.

Wherefore these defendants say the complainant should not again be heard upon these several matters and things, but that the several orders heretofore entered in this cause at the motion of complainant, and the contract made and executed pursuant thereto, should be approved.

H. S. PRIEST and
T. M. PIERCE,
Attorneys for the Defendants.

26

EXHIBIT 1.

MOTION FOR DECREE.

In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

MOTION FOR A DECREE ON MANDATE.

Now comes complainant, The United States of America, and shows to the honorable court that the above-named cause was commenced in what was then the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, on the 25th day of November, 1905; a commissioner appointed and testimony taken and reported to the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri.

That the cause was argued and submitted to said above-named United States Circuit Court, and said Circuit Court, after due consideration, entered a decree June 6, 1910, dismissing the complainant's petition.

That the complainant appealed said cause to the Supreme Court of the United States, where the decree of the said United
27 States Circuit Court for the Eastern Division of the Eastern Judicial District of Missouri was reversed, and the Supreme Court of the United States in its opinion filed says:

"These considerations lead to a reversal of the decree dismissing the bill.

"This is accordingly adjudged and the case is remanded to the District Court with directions that a decree be there entered directing the parties to submit to the court within ninety days after receipt of mandate a plan for the reorganization of the contract between the fourteen defendant railroad companies and the terminal company which we have pointed out as bringing the combination within the inhibition of the statute.

"First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

"Second. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

"Third. By eliminating from the present agreement between the terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the terminal company.

"Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then rebilling traffic destined to St. Louis or to points beyond.

28 "Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called one-hundred-mile area that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to the District Court upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Seventh. To avoid any possible misapprehension the decree should also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commission over the rates to be charged by the terminal company or the mode of billing traffic passing over its lines or the establishing of joint through rates or routes over its line or any other power conferred by law upon such commission.

"Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree, the court will, after hearing the parties upon a plan for the dissolution of the combination between the terminal company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems and their future operations as independent systems as may be necessary, enjoining the defendants singly and collectively from any exercise of control or dominion over either of the said terminal systems or their related constituent companies, through lease,

29 purchases, or stock control, and enjoining the defendants from

voting any share in any of said companies or receiving dividends directly or indirectly, or from any future combination of the said system in evasion of such decree, or any part thereof."

That on the 23rd day of May, 1912, mandate of the Supreme Court of the United States was issued and by order of this court on motion said mandate was filed and entered of record in said cause on the 3rd day of June, 1912.

Complainant now moves the court for the entry of a decree in pursuance of the direction of the Supreme Court of the United States that justice may be done.

(Signed) CHAS. A. HOUTS,
U. S. Attorney.
EDWARD C. CROW,
Of Counsel for Complainant.

Filed June 3, 1912.

30 EXHIBIT 2.

In the District Court of the United States, Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

INTERLOCUTORY DECREE ON MANDATE.

This cause came on to be heard at this term, the parties appearing by their respective solicitors, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 8, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the twenty-second day of April, 1912, ordered, adjudged, and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be, and the same is hereby, reversed, and that said cause be remanded to this court for further proceedings in accordance with the mandate of the Supreme Court of
31 the United States in this cause, bearing date of May 23, 1912, which mandate has been entered of record in this court on June 3, 1912.

Now, therefore, in obedience to said mandate and in cognizance with the opinion of the Supreme Court of the United States, it is hereby ordered, adjudged, and decreed as follows:

That the defendant, The Terminal Railroad Association of St. Louis, and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have

become comembers with the said fourteen railroad companies defendants herein, if any, shall submit to this court a plan upon which the defendants herein shall have agreed for the reorganization of the contracts, agreements, arrangements, and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between The Terminal Railroad Association of St. Louis, Missouri, and its fourteen co-defendant railroads, as aforesaid, as will make said contracts conform in all respects to the terms and conditions hereinafter mentioned.

First. For the removal of all clauses and provisions requiring unanimous consent of all the proprietary companies for the admission of any existing or future railroad to joint ownership and control and use of the terminal properties and facilities of the defendants and of their constituent, associated, related, controlled, leased, and operated corporations and companies.

Second. Accord definitely to any existing or future railroad company the specific right to admission to joint ownership and control and use of the combined terminal properties and facilities of the defendants upon such just and reasonable terms as will place the company seeking admission upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

32 Third. By providing definitely for and according the right to the use of the terminal properties and facilities of the defendants herein to any existing or future railroad company not wishing to become a joint owner, upon such reasonable and just terms and subject to such regulations as will, in respect of use, character, and cost of service, place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

FIXES COURT AS ARBITER.

Fourth. By providing that any disagreement between any company seeking to become a joint user or owner as in this decree provided for and the Terminal Railroad Association or the fourteen co-defendants of the Terminal Railroad Association, and which disagreement shall arise after a final decree in this cause, may be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri, upon a petition in this cause being filed, and the orders, judgments, and decrees of said District Court therein shall be subject to review by appeal in the usual manner.

Fifth. By eliminating and removing all provisions and clauses restricting and confining, or attempting to directly or indirectly restrict or confine the interstate traffic and commerce destined to St. Louis, Mo., or originating in St. Louis, or passing in any direction through St. Louis, or through the St. Louis railway gateway, without regard to its origin or destination, to the use of the facilities and properties of the Terminal Railroad Association of St. Louis, and removing all provisions confirming proprietary companies to

the use of the properties and facilities of the Terminal Railroad Association.

Sixth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points, and then rebilling traffic destined to St. Louis or to points beyond. The defendant railroad companies shall bill direct to St. Louis, Mo., all traffic destined to St. Louis, Mo. The defendants shall not bill to East St. Louis, Ill., or any other junction point, traffic destined to St. Louis, Mo., and then rebill said traffic to St. Louis, Mo. The defendants shall not bill to East St. Louis or other junction points traffic destined to pass through St. Louis, Mo., to points beyond, or through the St. Louis railway gateway, and then rebill the said traffic. Traffic destined to pass through St. Louis, Mo., or through the St. Louis railway gateway to points beyond, in any direction, shall be billed through to final destination.

33

ORDERS ARBITRARY ABOLISHED.

Seventh. Said plan of reorganization shall abolish completely any special or so-called arbitrary charge upon traffic (commonly known as "the arbitrary") for the use of the terminal properties and facilities of the defendants, between the termini of the existing or future proprietary railroads of St. Louis, Mo.; East St. Louis, Ill.; Granite City, Madison, Venice, and Brooklyn, Ill.; and any such arbitrary charge for the use of the properties and facilities of the defendants between the termini of the proprietary railroads in the territory of the St. Louis railway gateway in the States of Illinois and Missouri;

And in order to abolish completely the arbitrary charge above mentioned, the said plan for the reorganization and operation of defendants' properties and facilities shall provide such methods and means shall be used so that in the handling of traffic by the railroads of the defendants no methods or practices discriminating against the commerce of St. Louis, Missouri, either as to rates or service or in any other manner, shall be directly or indirectly used or permitted;

And that in the transportation and handling of traffic by the defendants the cities and towns of St. Louis, Mo., East St. Louis, Ill., Madison, Granite City, Venice, and Brooklyn, Ill., and the territory in the St. Louis railway gateway, shall be treated by the defendants, as to rates charged, service supplied, and facilities furnished, as one common commercial and business center, and the cities and towns above named herein and the territory of the St. Louis railway gateway shall be, as to traffic, treated as the St. Louis business district, and one and the same rate shall apply to the traffic to and from each of the above-named cities and towns and to the territory designated as the St. Louis railway gateway.

34

And the said plan of reorganization shall eliminate and remove all provisions and clauses of contracts and agreements between the

defendants or any of them, or any constituent controlled or leased or associated or operated corporations or companies, requiring the fixing and maintaining of any rates of toll or charges for the use of the terminal facilities and properties of the defendants between the termini of the existing or future proprietary railroads in St. Louis, Mo.; East St. Louis, Ill.; Granite City, Madison, Venice, and Brooklyn, Ill.; and between the termini of the proprietary railroads in the territory of the St. Louis railway gateway in the States of Missouri and Illinois, upon traffic originating in or destined to St. Louis, Mo., or passing through St. Louis, Mo., or the St. Louis railway gateway, in any direction without regard to its origin or destination, and which charges in any way, directly or indirectly, discriminate against the traffic of St. Louis, Mo., or the traffic passing through St. Louis, Mo., or the St. Louis railway gateway.

35 ELIMINATES TOLL AGREEMENT.

And said plan of reorganization shall eliminate from the agreement between the Terminal Railroad Association of St. Louis and the several proprietary lines, executed Oct. 1, 1889, and known as "Exhibit A," and from all other agreements of the defendants or any one or more of them, all provisions requiring the Terminal Railroad Association of St. Louis to fix rates of toll and charges for the use of the terminal facilities and properties of the defendants between the termini of the existing or future proprietary railroads in St. Louis, Mo.; East St. Louis, Ill.; Granite City, Madison, Venice, and Brooklyn, Ill., and between the termini of the proprietary railroads in the territory of the St. Louis railway gateway in the States of Missouri and Illinois, upon traffic and commerce originating in St. Louis, Mo., or destined to St. Louis, Mo., or passing through St. Louis, Mo., or the St. Louis railway gateway in any direction.

It is further ordered, adjudged, and decreed that the said agreement, if made between the complainant and the defendants, shall, and this decree is intended to, order that the said agreement be fully and completely in accordance and in cognizance with the opinion and decree and order of the Supreme Court of the United States in this case.

36 EXHIBIT 3.

In the District Court of the United States, Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et. al., defendants.

INTERLOCUTORY DECREE ON MANDATE.

This cause came on to be heard at this term, the parties appearing by their respective solicitors, and it appearing that the United States

of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States, in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 8, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the twenty-second day of April, 1912, ordered, adjudged, and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri, in this cause be, and the same is hereby, reversed, and that said cause be remanded to this court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date May 23, 1912,
37 which mandate has been entered of record in this court on June 3, 1912.

Now, therefore, in obedience to said mandate and in cognizance with the opinion of the Supreme Court of the United States, it is hereby ordered, adjudged, and decreed as follows:

That the defendant, The Terminal Railroad Association of St. Louis, and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have become comembers with the said fourteen railroad companies, defendants herein, if any, shall submit to this court a plan upon which the defendant herein shall have agreed for the reorganization of the contracts, agreements, arrangements, and leases, and the use and operation of the properties and terminal facilities of the defendants herein between The Terminal Railroad Association of St. Louis, Missouri, and its fourteen codefendant railroads, as aforesaid, as will make said contracts conform in all respects to the terms and conditions hereinafter mentioned.

First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. Such plan or reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place every such company as nearly on an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

38 Third. By eliminating from the present agreement between the terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called 100-mile area, that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to this court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. The final decree will also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic passing over its lines, or the establishing of joint rates or routes over its lines, or any other power conferred by law upon such commission.

Eighth. Upon the failure of the parties defendant to come to an agreement within ninety (90) (days) from June 3rd, 1912, which is in substantial accord with this decree, the court will, after hearing the parties to this cause upon a plan for the dissolution of the combination between the Terminal Company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems, and their future operation as independent systems, as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

39

Filed June 11, 1912.

40 EXHIBIT 4. PLAN I.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS and others, defendants.

Now comes the Terminal Railroad Association of St. Louis, one of the defendants in the above-entitled cause, and come also the fourteen defendant railroad companies named therein, and also the St. Louis Southwestern Railway Company, admitted as co-proprietary

company since the institution of this suit, and in pursuance of the judgment and decree heretofore entered in this cause, on or about the ——— day of June, 1912, respectfully submit to the court a plan for the reorganization of the existing contracts between said railroad companies and said Terminal Railroad Association of St. Louis, which will, as they are advised, make said contracts conform in all respects to the judgment and decree of court herein.

PLAN OF REORGANIZATION.

I.

Strike out of the contract entered into on or about the first
41 day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and certain of the defendant railroad companies therein named as parties of the second part, the XIX paragraph thereof, which reads as follows:

"XIX. This agreement may be executed in counter-parts, and any railroad company not named herein as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine, and on signing this agreement, or any counter-part thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named as second party hereto."

And in lieu thereof the following shall be adopted, to wit:

"It is now agreed between the parties hereto as follows:

(a) That in case any other railroad company not named as second party hereto shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place it upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner, or
42 user, as herein provided for, and the terminal company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States within and for the Eastern Division of the Eastern District of Missouri,

upon a petition filed in a certain cause in said court, entitled 'The United States of America vs. The Terminal Railroad Association of St. Louis et als.,' but any judgment or decree that may be entered therein shall be subject to review by appeal or writ of error in the usual manner."

II.

Strike out of said contract dated October 1st, 1889, the III paragraph thereof, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

And in lieu thereof the following shall be adopted, to wit:

"In consideration of the foregoing each of the proprietary companies (parties of the second part) for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first party, and hereby covenants and agrees that it will pay therefor as herein provided."

III.

There shall be an additional agreement made to said contract, dated October 1st, 1889, which shall read as follows:

"It is further agreed that each and every provision of any other agreement between said Terminal Railroad Association of
43 St. Louis and said railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect."

IV.

That the decree of the court approving this plan of reorganization shall also contain the following clauses, to wit:

"(a) A clause enjoining and prohibiting the billing of traffic destined to St. Louis or points beyond, to East St. Louis, or other junction points, and then rebilling same to St. Louis, in the State of Missouri, or points beyond, unless so directed by the party controlling such traffic.

"(b) A clause enjoining and prohibiting Terminal Railroad Association, defendant herein, from making any special or arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one-hundred-mile area, shown by the evidence, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"(c) A clause providing that nothing in said decree containing shall be deemed or taken to affect, in any wise or at any time, the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association of St. Louis, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such commission."

Filed July 8th, 1912.

44 EXHIBIT 5. PLAN II.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS and others, defendants.

Now comes the Terminal Railroad Association of St. Louis, one of the defendants in the above-entitled cause, and come also the fourteen defendant railroad companies named therein, and also the St. Louis Southwestern Railway Company, admitted as coproprietary company since the institution of this suit, and in pursuance of the judgment and decree heretofore entered in this cause, on or about the ——— day of June, 1912, respectfully submit to the court a plan for the reorganization of the existing contracts between said railroad companies, and said Terminal Railroad Association of St. Louis, which will, as they are advised, make said contracts conform in all respects to the judgment and decree of court herein.

PLAN OF REORGANIZATION.

I.

45 Strike out of the contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and certain of the defendant railroad companies therein named as parties of the second part, the XIX paragraph thereof, which reads as follows:

"XIX. This agreement may be executed in counterparts, and any railroad company not named herein as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine, and on signing this agreement, or any counterpart thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named, as second party hereto."

And in lieu thereof the following shall be adopted, to wit:

"It is now agreed between the parties hereto as follows:

"(a) That in case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

"(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

"(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner or
46 user, as herein provided for, and the Terminal Company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States, within and for the Eastern Division of the Eastern District of Missouri, upon a petition filed in a certain cause in said court, entitled, 'The United States of America vs. The Terminal Railroad Association of St. Louis et als.,' but any judgment or decree that may be entered therein, shall be subject to review by appeal or writ of error, in the usual manner."

II

Strike out of said contract dated October 1st, 1889, the III paragraph thereof, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis and pay therefor as herein provided."

And in lieu thereof the following shall be adopted, to-wit:

"In consideration of the foregoing each of the proprietary companies (parties of the second part) for itself only, and not for others, accepts, the right of joint use hereinbefore granted by the first party, and hereby covenants and agrees that it will pay therefor as herein provided."

III.

There shall be an additional agreement made to said contract dated October 1st, 1889, which shall read as follows:

"It is further agreed that each and every provision of any other agreement between said Terminal Railroad Association of St.
47 Louis and said railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect."

IV.

There shall be additional agreements made to said contract dated October 1st, 1889, which shall read as follows:

"It is further agreed as follows:

"(a) It is agreed that hereafter traffic destined to St. Louis or points beyond shall not be billed to East St. Louis or other junction points and then rebilled to St. Louis, in the State of Missouri, or points beyond, unless so directed by the party controlling such traffic.

"(b) It is further agreed that the Terminal Railroad Association, party of the first part, shall not make any special or arbitrary charge for the use of its terminal facilities in respect of traffic originating within the so-called 100-mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"(c) Nothing contained in the preceding clauses (a) and (b) of this paragraph shall be deemed or taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the ratec to be charged by the Terminal Railroad Association of St. Louis or the mode of billing traffic passing over its lines or the establishing of joint through rates or routes over its lines or any other power conferred by law upon such commission."

Filed July 8, 1912.

48 EXHIBIT 6.

OBJECTIONS OF COMPLAINANT TO PLANS I AND II, SUBMITTED BY DEFENDANTS.

(Filed July 9, 1912.)

In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

Comes now the complainant in the above-entitled action and objects to each of the proposed plans for final decree submitted by the defendants for the following reasons:

First. Because under subdivision No. 1, in both plans I and II submitted by the defendants, the substitution proposed in the contract

of October 1, 1889, between the Terminal Railroad Association as first party and certain of the defendant railroad companies as party of the second part is not an attempt to carry out the order of the Supreme Court, but merely a recital of said order, and would if embodied in a decree practically call for an arbitration and hearing by the United States District Court each time an existing or future railroad company sought joint ownership or use of the terminal
49 properties of the defendants. Complainant contends the Supreme Court intended that the modification of the agreement between the defendants so as to eliminate the violations of the law produced by the old contract October 1, 1889, and accord to all railroads the right to joint ownership or use should be such a practical, definite agreement as would ordinarily be made between railroad companies and the provisions of which should definitely define the rights of the applying and proprietary companies so that the right to joint ownership or use could readily and practically be acquired without necessarily resorting to the United States District Court as an arbitrator, with consequent appeals and extended delays resulting therefrom.

Second. Complainant objects to the provision substituted for the third paragraph of the contract of October 1, 1889, above mentioned in subdivision No. 2 of said plans I and II, for the reason that the same or a similar clause binding defendants is found in several subsequent contracts and agreements of the defendants or some of the defendants, and the complainant contends this clause which is in violation of the law should by the decree be ordered stricken from all agreements and contracts of the defendants. This objectionable paragraph III occurs in, or by reference is incorporated into, the following contracts and agreements of the defendants:

Trust agreement made December 16, 1902. (Exhibits, p. 2658.)

Guarantee agreement of December 16, 1902. (Exhibits, p. 1932.)

Admission agreement of December 16, 1902, with Southern Railway Company, Illinois Central Railroad Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and the Missouri, Kansas and Texas Railway Company. (Exhibits, p. 1693.)

50 The agreement admitting the Chicago, Rock Island and Pacific Railway Company, executed December 16, 1902. (Exhibits, p. 3250.)

Admission agreement of St. Louis and San Francisco Railroad Company of June 9, 1902. (Exhibits, p. 3249.)

Admission agreement of St. Louis, Vandalia and Terre Haute Railroad Company, executed February 13, 1902. (Exhibits, p. 3241.)

Third. Complainant objects to the third paragraph in each of said plans I and II, for the reason it does not specifically name the agreements and portions thereof and remove therefrom the parts which are held to be unlawful, so as to make the contracts and agreement accord with and conform to the opinion of the Supreme Court.

Fourth. Complainant objects to clause A, paragraph IV of plan I; first, because the order of the court directing that traffic destined to St. Louis, Missouri, or points beyond should not be billed to East St. Louis or other junction points and then rebilled to St. Louis, Missouri, contained nothing authorizing the defendant companies to bill traffic destined to St. Louis, Missouri, to East St. Louis, Illinois, or other junction points when so directed by the party controlling such traffic, and therefore the words inserted in defendant's proposed decree, "Unless so directed by the party controlling such traffic," should not be placed in said decree; second, because clause A, paragraph IV of plan I, is but a recital of the order of the Supreme Court and not an attempt to carry it into effect.

Complainant further objects to clause B of paragraph IV of plan I of defendants' proposed decree, for the reason that the same is merely a recital, in effect, of the order of the Supreme Court and does not define and point out in what manner the defendants will conduct interstate traffic so as to abolish the arbitrary charge in re-
51 spect to traffic originating in the so-called 100-mile area. And said clause B of paragraph IV is objectionable for the reason that it fails to set out a clear, effective, and definite method of handling the traffic by the defendants, so as to eliminate and remove the arbitrary charge which the Supreme Court finds unlawful and directs should be removed. Said clause B of paragraph IV is objected to because, instead of attempting to carry out the directions of the Supreme Court, it merely recites the order of said court.

Fifth. The complainant objects to paragraph IV in plan No. II, on the same grounds as complainant objects to clauses A and B of paragraph IV in plan No. I; and in addition thereto because the Supreme Court in its opinion says that the practice of billing the traffic destined to St. Louis or points beyond East St. Louis or other junction points and then rebilling same to St. Louis, in the State of Missouri, or points beyond should be enjoined; and because the Supreme Court in its opinion says that the practice of the defendants in making the arbitrary charge upon traffic originating within the so-called 100-mile area about St. Louis should also been enjoined; and these matters complainant asserts should be made a matter of injunctive relief and defendants enjoined from these practices, and the order of the court and not agreements between the defendants should remove these violations of the law pointed out by the Supreme Court, because these are matters of public interest and not private concern and should be controlled by orders of the court and embodied in an enforcible decree.

(Signed) EDWARD C. CROW,
Special Asst. to the Atty. Genl.

52 EXHIBIT 7.

FORM OF DECREE AS PROPOSED BY COMPLAINANT AND MOTION FOR ENTRY OF SAME.

(Filed July 9, 1912.)

In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

Comes now the complainant herein and moves the court to enter the attached copy of decree as and for the final decree in this cause.

(Signed) EDWARD C. CROW,
Special Asst. to the Atty. Genl.

53 In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the 22nd day of April, 1912, ordered, adjudged, and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be, and the same is hereby, reversed, and that said cause is remanded to this court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date the twenty-third day of May, 1912.

And afterwards, to-wit, it appearing that on the 3rd day of June, 1912, a preliminary decree was entered in accordance with the
54 mandate of the Supreme Court, now, therefore, it is ordered, adjudged, and decreed by the court as follows:

That there shall be removed from the agreement known as "Exhibit A," and executed October 1, 1889, between the Terminal Railroad Association of St. Louis, as first party, and the various named defendants herein as second party, clause XVII thereof reading as follows:

"Neither party shall sell, assign, transfer or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party."

And also clause XIX, reading as follows:

"This agreement may be executed in counterparts, and any railroad company not named as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but not otherwise of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party."

And in lieu of paragraph XIX thereof an agreement in substantially the following form shall be made between the Terminal Railroad Association of St. Louis, Missouri, party of the first part, and any existing or future railroad company wishing to become a joint owner of the terminal properties in Missouri and Illinois now held and operated or hereafter held and operated by the said Terminal Railroad Association:

"Whereas the Terminal Railroad Association of St. Louis, Missouri, has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the
55 cities of St. Louis, Missouri, East St. Louis, Madison, Granite City, and Venice, Illinois, adapted and used for handling and interchanging interstate commerce and traffic; and,

"Whereas the ——— ——— company wishes to secure in proper form and in perpetuity a joint ownership in and a right to use said terminal properties now held, or hereafter to be acquired by the Terminal Railroad Association of St. Louis, Missouri.

"Therefore, it is agreed between the parties as follows:

"First. That the Terminal Railroad Association of St. Louis, Missouri, does hereby agree to cause to be transferred and delivered to ——— ——— shares of the capital stock of said terminal association, said ——— shares being the proportion of such stock now held severally by each of the railroad companies owning the stock of the Terminal Railroad Association under the contract heretofore made with said association and said above named proprietary owning railroad companies, and said Terminal Railroad Association does hereby admit said ——— ——— company to the joint ownership and use with the present proprietary companies of all the above named terminal facilities of the said Terminal Railroad Association of St. Louis, in like manner and to like extent with each and all of the

said owning proprietary companies, it being the intent of this agreement that a joint and common ownership and joint use of the above-named properties shall be had by the present proprietary owning railroad companies and ——— ——— company to the end and in order that the said Terminal Railroad Association of St. Louis, Missouri, shall act as the impartial agent of the present proprietary owning railroad companies and ——— ——— company.

"Second. In consideration of said transfer and delivery of said stock, and admission to membership as a proprietary line of said terminal company, the said ——— ——— company accepts
56 the right of joint ownership and use herein granted by said terminal company, and hereby covenants and agrees to pay its proper proportion of the following items as set out in the contract known as agreement A between the Terminal Railroad Association of St. Louis, Missouri, as first party, and certain of the proprietary railroad companies named therein as proprietary companies and executed October 1, 1889, to wit:

"1. Rental due to the bridge and tunnel companies under the lease heretofore described as follows:

Interest on bridge bonds	$350,000
Dividend on Bridge Company first preferred stock	140,000
Dividend on Bridge Company second preferred stock	90,000
Dividend on tunnel railroad capital stock	75,000
To maintain corporate organization of bridge and tunnel companies	2,500

"2. Interest on all outstanding 4½ per cent bonds of the first party.

"3. Dividends on such bonds or preferred stock, not now contemplated, but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

"4. All taxes and assessments, premiums of insurance, rentals on leaseholds, and expenses of every kind incurred in the maintenance, operation, repair, and renewal of said terminal system, and every part thereof.

"5. A sum of money not exceeding two thousand dollars in any one year to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party and of any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

57 "Provided also, that the basis of said adjustment of the above items to be paid by ——— ——— company shall be as follows: That is to say, the ——— ——— company shall pay such proportion of said above-named items as its business carried on over and upon said terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the terminal company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

"The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the board of directors of said Terminal Railroad Association of St. Louis, Missouri: Provided, however, if the disagreement as to the proportion of use arises between a company applying to become a point owner and the proprietary company, it may be submitted to the District Court of the United States for the Eastern Division of the Eastern District of Missouri upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Third. It is hereby declared to be the intention of the parties hereto that said ——— ——— company, as consideration for and upon acceptance of said stock and the execution of this agreement, shall, and hereby does, become a party to the said agreement 'A' hereinbefore mentioned, with like force and effect as if it had been executed October 1, 1889, the date upon which said agreement was executed by the then parties thereto, save and except that the said ——— ——— company intends to, and does hereby, only become a party to the agreement of October 1, 1889, known as 'Exhibit A,' as modified and changed by the opinion of the Supreme Court of the United States herein, and it is intended to and does bind neither of said parties hereto except insofar as it is in accord and harmony with each and every part of said opinion and in compliance therewith.

58 "Fourth. The stock of said terminal company to be issued as herein contemplated shall in form and conditions of issue correspond in all respects with the certificates of stock heretofore severally issued to said proprietary companies.

"Fifth. Upon the execution and delivery hereof, or so soon thereafter as can be conveniently done, two (2) shares of stock shall be transferred to such person as said ——— ——— company may designate as a director of said terminal company to represent the interests therein of said ——— ——— company and for the purpose only of qualifying such person as a director; and the remaining shares of stock to be issued to said ——— ——— company as herein contemplated shall be transferred to said ——— ——— company, and said terminal company shall cause the party designated by said ——— ——— company to be elected a member of the board of directors of said terminal company.

"Sixth. In case of any disagreement between an applying company seeking joint ownership of the terminal properties and the proprietary companies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the terminal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies, and when the disagreement shall have been finally settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the terminal properties and for

the service rendered by the terminal company. Provided, however, that before an applying company can avail itself of the use of the properties of the terminal company pending litigation it shall furnish a bond with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District
59 of Missouri or the judge of said court, conditioned that prompt payment will be made of all sums due for use of the properties and the service rendered by the terminal company pending the settlement of the dispute in court between the applying and the proprietary companies.

"In testimony whereof, the parties hereto have caused this agreement to be executed by their proper officers in duplicate, as of the ——— day of ———, 19—.

"_____ _____

"_____ _____."

It is also ordered that in case any existing or future railroad company desires to use but not to acquire the joint ownership of the properties of the Terminal Railroad Association an agreement in substantially the following form shall be entered into between said company and the Terminal Railroad Association of St. Louis, Missouri:

"Whereas the Terminal Railroad Association of St. Louis, Missouri, has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the cities of St. Louis, Missouri, East St. Louis, Madison, Granite City, and Venice, Illinois, adapted and used for handling and interchanging interstate commerce and traffic; and

"Whereas the ——— ——— company wishes to secure in proper form a right to use the said terminal properties now held or hereafter to be acquired by the Terminal Railroad Association of St. Louis, Missouri,

"Therefore, it is agreed between the parties as follows:

"That the said Terminal Railroad Association, of St. Louis, Missouri, party of the first part, in consideration of the covenants and agreements herein contained to be kept and performed by the ——— ——— company, party of the second part, does hereby lease,
60 devise, and let and grant to second party the right at all times to use for years the terminal properties acquired in Missouri and Illinois in and adjacent to the cities of St. Louis, Missouri, East St. Louis, Madison, Granite City, and Venice, Illinois, and properties now or hereafter located in what is known now or may be known as the St. Louis Railway Gateway for interstate commerce, as the said properties now are or may be hereafter located, constructed, maintained, operated, or acquired for the interchange and handling of interstate commerce by railroad companies at and in the territory above named and the transportation of persons and property over and upon the said terminal property, including the right of said second party to use all real estate, stations, depots, warehouses, docks,

ferries, right of way, single and double tracks, loading and team tracks, and bridges and all facilities of every class and kind now owned, leased, or controlled or operated by the first party or that may hereafter be operated, controlled, or owned or leased by said first party for the purpose of transporting persons and property or for collecting and receiving freight upon the following conditions and terms, to wit:

"The said party of the first part grants the second party the use of all its terminal properties and facilities and equal access thereto to the same extent and in the same manner and agrees hereby to perform the same service for the said second party as the said first party now or in the future may give to the present or future proprietary railroad companies in the transportation of persons and property and the interchange of interstate commerce between said railroad carriers over the terminal properties of the party of the first part, it being the intention of this agreement to definitely accord to the party of the second part the use of the terminal facilities of the party of the first part so that in respect of use and character of service the said second party shall have the same kind and equal service with that given the present or future proprietary
61 companies in the transportation over said terminal properties of persons and property and the collection and distribution and handling of freight and shall have equal and like use and service without discrimination of any kind of all facilities and properties now owned or hereafter owned, used, acquired, or operated by said first party in connection with its terminal business to the end that the said first party in handling the traffic of the second party and the traffic of the owning proprietary railroad companies shall act as the impartial agent of said second party and the proprietary owning lines. And in consideration of the several previous undertakings and agreements herein contained to be kept and performed by said party of the first part the party of the second part hereby contracts and agrees to and with the said party of the first part:

"First. That the said second party or its successors or assigns will pay to the first party for the use of the properties of the first party and for the services rendering in transporting persons and property under this contract its proper proportion of the following items as set out in the contract known as agreement "A" between the Terminal Railroad Association of St. Louis, Missouri, as first party and certain of the proprietary railroad companies named therein as proprietary companies and executed October 1, 1889, to wit:

"1. Rental due to the Bridge and Tunnel Companies, under the lease heretofore described as follows:

Interest on bridge bonds	$350,000
Dividend on bridge company first preferred stock	149,400
Dividend on bridge company second preferred stock	90,000
Dividend on tunnel railroad capital stock	75,000
To maintain corporate organization of bridge and tunnel companies	2,500

"2. Interest on all outstanding 4½ per cent bonds of the first party.

62 "3. Dividends on such bonds or preferred stock not now contemplated but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

"4. All taxes and assessments, premiums of insurance, rentals on leaseholds, and expenses of every kind incurred in the maintenance, operation, repair, and renewal of said terminal system and every part thereof.

"5. A sum of money, not exceeding two thousand dollars in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party and of any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

"Provided also, that the basis of said adjustment of the above items to be paid by ——— ——— company shall be as follows: That is to say, the ——— ——— company shall pay such proportion of said above-named items as its business carried on over and upon said terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the terminal company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

"The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the board of directors of the said Terminal Railroad Association of St. Louis, Missouri: Provided, however, if the disagreement as to the proportion of use arises between a company applying to become a joint owner and the proprietary companies it may be submitted to the District Court of the United States for the Eastern Division of the Eastern District of Missouri upon a petition filed in this cause, subject to review by appeal in the usual manner.

63 "Second. In case of any disagreement between an applying company seeking use of the terminal properties and the proprietary companies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the terminal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies, and when the disagreement shall have been finally settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the terminal properties and for the service rendered by the terminal company: Provided, however, that before an applying company can avail itself of the use of the properties of the terminal company pending litigation it shall furnish a bond, with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District of Missouri or the judge of said court, conditioned that prompt payment will be made of all sums due for use of the properties and the

service rendered by the terminal company pending the settlement of the dispute in court between the applying and proprietary companies.

"Provided, that nothing herein shall be construed as compelling party of the second part to pay any part of the annual payment of one hundred thousand dollars ($100,000) as a sinking fund made by said terminal association under the covenant in the fifty million dollar ($50,000,000) mortgage dated December 16, 1902.

"In testimony whereof the parties hereto have caused this agreement to be executed by their proper officers in dupicate as of the —— day of ———, 19—.

"_____ _____,
"_____ _____."

Second. It is ordered by the court that there be stricken out of
64 the contract known as "Exhibit A," of October 1, 1889, between the Terminal Railroad Association of St. Louis, Missouri, and certain named railroad companies who are defendants herein, paragraph III, which reads as follows:

"In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefore as herein provided."

It is ordered that whenever said paragraph III of said contract or a substantially similar one occurs in, or is by a reference incorporated into the following-named contracts and agreements or any other contracts and agreements between defendants, or any of them, that it shall be and is hereby removed therefrom so that the said contracts and agreements shall contain no clause unlawfully restricting and restraining interstate commerce to the facilities of the said terminal company:

Trust agreement of December 16, 1902. (Exhibits, p. 2658.)

Guarantee agreement of December 16, 1902. (Exhibits, p. 1932.)

Admission agreement of December 16, 1902, with Southern Railway Company, Illinois Central Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and The Missouri, Kansas and Texas Railway Company. (Exhibits, p. 1593.)

The agreement admitting the Chicago, Rock Island and Pacific Railway Company, executed December 16, 1902. (Exhibits, p. 3250.)

Admission agreement of St. Louis and San Francisco Railway Company of June 9, 1902. (Exhibits, p. 3249.)

65 Admission agreement of St. Louis, Vandalia and Terre Haute Railroad Company, executed February 13, 1902. (Exhibits, p. 3241.)

Third. It is ordered and adjudged that the defendants herein and all existing or future railroad companies who may become joint owners or joint users of the terminal properties of the defendants shall bill traffic as follows:

All traffic destined to St. Louis, Missouri, shall be billed direct to St. Louis, Missouri.

All traffic originating in St. Louis, Missouri, shall be billed direct to point of destination and shall not be billed to East St. Louis, Illinois, or other junction point and then rebilled to point of destination.

The defendants shall not bill to East St. Louis, Illinois, or any other junction point, traffic destined to St. Louis, Missouri, and then rebill said traffic to St. Louis, Missouri.

The defendants shall not bill to East St. Louis or other junction points traffic destined to pass through St. Louis, Missouri, to points beyond, or through the St. Louis railway gateway, and then rebill the said traffic.

Traffic destined to pass through St. Louis, Missouri, or through the St. Louis railway gateway to points beyond, in any direction, shall be billed through to final destination.

And under no circumstances shall traffic destined to St. Louis, Missouri, or points beyond be billed to East St. Louis, Illinois, or other junction point and rebilled to St. Louis, Missouri, or to points beyond nor shall traffic originating in St. Louis be under any circumstances billed to East St. Louis, Illinois, or other junction point and then rebilled to the point of destination.

Fourth. It is ordered and decreed that the defendants herein, and any existing or future railroad company acquiring a joint ownership in or a right to use the terminal properties now held or here-
66 after acquired by the defendants, shall not make a special or so-called arbitrary charge (commonly known as "the arbitrary") upon traffic destined to St. Louis, Missouri, or points beyond, or originating in St. Louis, Missouri, or passing through St. Louis, Missouri, or the St. Louis railway gateway to points beyond for the use of and transportation over the terminal properties and facilities the defendants now own or may hereafter acquire, between the termini of the proprietary railroads of said terminal association in St. Louis, Missouri, East St. Louis, Granite City, Madison, Venice, and Brooklyn, Illinois, nor between the termini of the proprietary railroads of said terminal asociation in the territory of the St. Louis railway gateway in the States of Missouri and Illinois.

And it is ordered that in the transportation and handling of traffic by the defendants, the cities and towns of St. Louis, Missouri, East St. Louis, Illinois, Madison, Granite City, Venice, and Brooklyn, Illinois, and the territory in the St. Louis railway gateway, shall be treated by the defendants as to rates charged, service supplied and facilities furnished, as one common commercial and business centre, and the cities and towns above named herein and the territory of the St. Louis railway gateway shall be, as to traffic,

treated as the St. Louis business district, and one and the same rate for transportation of persons and property shall be charged to and from each of the above named cities and towns and to the territory designated as the St. Louis railway gateway.

And it is ordered and adjudged that no different or greater rate be charged by defendants for traffic destined to St. Louis, Missouri, than is charged for similar traffic destined to East St. Louis, Madison, Venice, Granite City, or Brooklyn, Illinois, or any other point in the territory designated as the St. Louis Railway Gate-
67 way; and that no greater or different rate be charged for traffic destined to East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, or any other point in the territory designated as the St. Louis railway gateway than is charged for similar traffic destined to St. Louis, Missouri; that no different rate be charged upon traffic originating in St. Louis, Missouri, than is charged for similar traffic originating in East St. Louis, Venice, Granite City, Madison, or Brooklyn, Illinois, or any other point in the territory known as the St. Louis Railway Gateway; that no different or greater rate be charged upon traffic originating in East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, than is charged upon traffic originating in St. Louis, Missouri; it being intended by this decree to prevent discrimination in the handling of interstate commerce by defendants either in favor of or against St. Louis, Missouri, East St. Louis, Madison, Granite City, Venice, and Brooklyn, Illinois, or any other point in the territory now or hereafter designated as the St. Louis railway gateway.

Delivery shall be made at any point upon the said terminal tracks in any of above named cities or towns to which traffic may be billed.

Fifth. It is further ordered that there shall be eliminated from the contract known as "Exhibit A" of October 1, 1889, the following language in paragraph V thereof, to wit:

"That such rates of toll or charges for the use of the bridge, depots, and other properties of said terminal system shall, subject to provision of article 13, be fixed from time to time by the first party as will produce a sum sufficient each year to pay the following, which sums."

And it is ordered that wherever said words above set out in
68 paragraph V of said Exhibit A occur in or are by reference incorporated into the following-named contracts and agreements between defendants or any of them it shall be, and is hereby, removed therefrom so that said contracts and agreements shall contain no clauses requiring the defendants to fix and collect rates of toll and charges upon traffic destined to St. Louis, Missouri, or East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, or any point in the territory now or hereafter known as the St. Louis Railway Gateway or originating in either of said cities or towns or in said territory, or passing through said cities or towns or territory to points beyond for the use of the terminal facilities and prop-

erties of the defendants between the termini of the existing or future proprietary railroads in St. Louis, Missouri, East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, or any point in what is now or may be hereafter known as the territory of the St. Louis Railway Gateway:

Trust agreement made December 16, 1902—Exhibits P. 2658.

Guarantee agreement of December 16, 1902—Exhibits P. 1932.

Admission agreement of December 16, 1902, with Southern Railway Company, Illinois Central Railroad Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and the Missouri, Kansas and Texas Railway Company—Exhibits P. 1593.

The agreement admitting the Chicago, Rock Island and Pacific Railway Company, executed December 16, 1902—Exhibits P. 3250.

Admission agreement of St. Louis and San Francisco Railroad Company of June 9, 1902—Exhibits P. 3249.

Admission agreement of St. Louis, Vandalia and Terre Haute Railroad Company, executed February 13, 1902—Exhibits P. 3241.

69 Provided nothing herein shall be construed to prevent the said Terminal Railroad Association from making a proper switching charge for services performed after traffic has been finally delivered to the point of destination to which it was billed in either of the above named cities or towns or any point in the territory now or hereafter designated as the St. Louis Railway Gateway.

Sixth. It is further ordered and adjudged that any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said terminal properties and the owning proprietary companies shall be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed and the party so filing said petition shall at least fifteen (15) days before doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day at least fifteen (15) days after the service of said notice.

Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri and shall be heard when called in its regular order on said docket, and the proceedings shall be subject to review by appeal as in any other cases.

Seventh. It is further adjudged and decreed that nothing herein shall affect the power of the Interstate Commerce Commission over rates charged by the said Terminal Railroad Association or the power of said commission to determine the mode of billing traffic over the line of said association or any other power legally conferred upon said commission.

70 EXHIBIT 8.

In the District Court of the United States for the Eastern Division of the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS and others, defendants. } No. 5250.

The plan of a new agreement proposed to be entered into by the defendants came on for hearing, the parties appearing by their respective solicitors, and also the objections thereto filed by the solicitor for the complainant and the form of a decree submitted by the solicitor of the complainant; and the court having heard arguments of counsel and being now sufficiently advised, doth postpone the hearing on the proposed decree submitted by the solicitor for the complainant until the final hearing of this cause. As to the objections to the proposed plans submitted by the defendants, which were filed by the solicitor for the complainant, the same are overruled, except as they are included in the plan hereinafter set out, and which the court will approve, if and when carried out by the execution of the agreement as therein set forth; that a plan of agreement in words and figures, as follows, to wit, will be approved by the court upon final hearing, as being in conformity with the mandate of the Supreme Court of the United States in this case.

71 PLAN OF REORGANIZATION.

I.

Strike out the contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and certain of the defendant railroad companies therein named as parties of the second part, the XIX paragraph thereof, which reads as follows:

"XIX. This agreement may be executed in counter-parts, and any railroad company not named herein as second party hereto, may be admitted to joint use of the said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine, and on signing this agreement, or any counter-part thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other than the said proprietary companies named, as second party hereto."

And in lieu thereof the following shall be adopted, to wit:

"It is now agreed between the parties hereto as follows:

"(a) That in case any other railroad company not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member

thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality, in respect of benefits and burdens, of the parties hereto of the second part.

"(b) That any other railroad company not electing to become a joint owner as above provided but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service, place it upon as nearly an equal plane as may be, with respect
72 to expenses and charges as that occupied by the proprietary companies.

"(c) It is further agreed that in case of any disagrement between any company applying to become a joint member, owner, or user, as herein provided for, and the terminal company or proprietary companies which shall hereafter arise, the same may be submitted to the District Court of the United States within and for the Eastern Division of the Eastern District of Missouri upon a petition filed in a certain cause in said court entitled, 'The United States of America versus The Terminal Railroad Association of St. Louis et al., No. 5250, equity docket,' but any judgment or decree that may be entered therein shall be subject to review by appeal or writ of error in the usual manner."

II.

Strike out of said contract dated October 1st, 1889, the III paragraph thereof, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

And in lieu thereof the following shall be adopted, to wit:

"In consideration of the foregoing each of the proprietary companies (parties of the second part), for itself only, and not for others, accepts the right of joint use hereinbefore granted by the first part, and hereby covenants and agrees that it will pay therefor as herein provided."

III.

Strike out of said contract dated October 1, 1889, the XVII paragraph, which reads as follows:

73 "Neither party hereto shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them,

to any other company or companies, without the unanimous consent of the board of directors of the first party."

And in lieu thereof it is agreed as follows:

"Neither party shall underlet the rights and privileges hereby granted, or any of them, to any other company or companies."

IV.

It is further agreed there shall be additional agreements made to said contract dated October 1, 1889, and any subsequent contracts amending the same, which shall read as follows:

"It is further agreed as follows:

"(a) It is agreed that hereafter traffic destined to St. Louis, in the State of Missouri, or to points west of the Mississippi River and destined to be transported through the St. Louis gateway, or traffic destined from the city of St. Louis to points east of the Mississippi River, shall not be billed to East St. Louis, in the State of Illinois, or other junction points or terminals of either of said railroad companies which are east of the Mississippi River and then rebilled to St. Louis or points beyond, as aforesaid, but for all such traffic each railroad shall issue through bills of lading unless otherwise directed by the party controlling such traffic.

"(b) It is further agreed that the Terminal Railroad Association, party of the first part, and the defendant railroad companies, parties of the second part, shall not make any special or so-called arbitrary charge in respect of the traffic originating within the so-called 100-mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"(c) Nothing contained in the preceding clauses (a) and (b) of this paragraph shall be deemed or taken to affect in anywise or any time the power of the Interstate Commerce Commission over
74 the rates to be charged by the terminal company or any of the railroad companies, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred upon such commission by law."

V.

There shall be an additional agreement made to the said contract dated October 1, 1889, which shall read as follows:

"It is further agreed that each and every provision in the contract dated October 1, 1889, and all contracts made subsequently thereto between the said Terminal Railroad Association of St. Louis and its codefendant railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect."

The complainant, by its solicitor, excepts to the overruling by the court of its objections to the proposed plan, and also excepts to the plan as approved by the court.

July 9th, 1912.

[SEAL.] (Signed) JACOB TRIEBER, *Judge.*

A true copy.

Attest: W. W. NALL, *Clerk.*

Filed July 9th, 1912.

75

EXHIBIT 9.

FORM OF CONTRACT TO BE ENTERED INTO, AS PRESCRIBED BY PLAN ADOPTED BY THE COURT, AND THE APPROVAL OF THE FORM OF THE CONTRACT.

Come now the defendants in the above cause and present to the court the form of contract carrying out the plan of reorganization of the agreement between the terminal association and the proprietary companies, which is in words and figures as follows, to wit: (here insert) and the same having been considered by the court is approved.

July 9th, 1912.

(Signed) JACOB TRIEBER, *Judge.*

Filed July 9th, 1912.

This agreement, made this the ——— day of ———, 1912, between the Terminal Railroad Association of St. Louis (hereinafter called Terminal Company), party of the first part, St. Louis Southwestern Railway Company, the Missouri Pacific Railway Company, St. Louis, Iron Mountain and Southern Railway Company, Wabash Railroad Company, Vandalia Railroad Company, Baltimore and Ohio Southwestern Railroad Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Louisville and Nashville Railroad Company, St. Louis and San Francisco Railroad Company, the Chicago, Rock Island and Pacific Railway Company, Southern Railway Company, Illinois Central Railroad Company, the Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and Missouri, Kansas and Texas Railway Company, parties of the second part (hereinafter called proprietary companies); and the Chicago, Burlington and Quincy Railroad Company, the Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and the Chicago and Alton Railroad Company, parties of the third part (hereinafter called guarantors). Witnesseth:

76

Whereas the Supreme Court of the United States, in its opinion in the case of United States of America versus Terminal Railroad Association of St. Louis and others, and the decrees therein entered pursuant to said opinion by the District Court within and for the Eastern Division of the Eastern District of Missouri (to which ref-

erence is hereby made), determined that the III, XVII, and XIX paragraphs of the agreement made and entered into on October 1st, 1889, by and between terminal company and the Missouri Pacific Railway Company and several other railroad companies therein mentioned and called proprietary companies, were in certain respects in violation of the statute of the United States subsequently enacted; and

Whereas since the date of said agreement several of the above-named parties of the second part have, pursuant to the terms of that agreement, been admitted as parties thereto; and

Whereas the aforesaid guarantors did by certain special agreements guarantee the performance of the contract of October 1st, 1889, between the Terminal Railway Association and the Chicago & Alton Railway Company, and the Chicago, Burlington & Quincy Railway Company, and the Vandalia Railroad Company; and

77 Whereas it is the desire of the guarantors that their guaranties so, respectively and singly, made shall continue in respect of the agreement between the parties of the first and second part, as amended herein.

Now, therefore, pursuant to and in accordance with said decrees aforesaid, it is agreed as follows:

I.

It is agreed that paragraph XIX of said contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and certain of the defendant railroad companies therein named as parties of the second part, which reads as follows:

"XIX. This agreement may be executed in counterparts, and any railroad company not named herein as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party and on payment of such consideration as they may determine, and on signing this agreement, or any counterpart thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named, as second party hereto," is hereby cancelled and made of no further force or effect, and in lieu thereof:

"It is now agreed between the parties hereto as follows:

"(a) That in case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof with equal rights of joint ownership and control of the combined terminal properties of said association upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

"(b) That any other railroad company not electing to become
78 a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis may enjoy the use thereof upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service place it upon as nearly an equal plane as may be, with respect to expenses and charges as that occupied by the proprietary companies.

"(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner, or user, as herein provided for, and the terminal company or proprietary companies which shall hereafter arise, the same may be submitted to the District Court of the United States within and for the Eastern Division of the Eastern District of Missouri, upon a petition filed in a certain cause in said court, entitled 'The United States of America versus the Terminal Railroad Association of St. Louis et als., No. 5250, equity docket,' but any judgment or decree that may be entered therein shall be subject to review by appeal or writ of error in the usual manner."

II.

It is further agreed that paragraph III of said contract dated October 1st, 1889, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

In consideration of the foregoing each of the proprietary companies (parties of the second part), for itself only and not for others,
accepts the right of joint use herein before granted by the first
79 party and hereby covenants and agrees that it will pay therefor as herein provided.

III.

It is further agreed that paragraph XVII of said contract dated October 1st, 1889, which reads as follows:

"Neither party hereto shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

"Neither party shall underlet the rights and privileges hereby granted, or any of them, to any other company or companies."

IV.

It is further agreed as follows:

"(a) It is agreed that hereafter traffic destined to St. Louis, in the State of Missouri, or to points west of the Mississippi River, and destined to be transported through the St. Louis gateway, or traffic destined from the city of St. Louis to points east of the Mississippi River, shall not be billed to East St. Louis, in the State of Illinois, or other junction points or terminals of either of said railroad companies which are east of the Mississippi River and then rebilled to St. Louis or points beyond, as aforesaid, but for all such traffic each railroad shall issue through bills of lading unless otherwise directed by the party controlling such traffic.

"(b) It is further agreed that the Terminal Railroad Association, party of the first part, and defendant railroad companies, parties of the second part, shall not make any special or so-called arbitrary charge in respect of the traffic originating within the so-called 100-mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

"(c) Nothing contained in the preceding clauses (a) and (b) of this paragraph shall be deemed or taken to affect in anywise, or
80 at any time, the power of the Interstate Commerce Commission over the rates to be charged by the terminal company, or any of the railroad companies, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred upon such commission by law."

V.

It is further agreed as follows:

That each and every provision in the contract dated October 1st, 1889, and all contracts made subsequent thereto between the said Terminal Railroad Association of St. Louis and its codefendant railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect.

In witness whereof, the parties hereto have caused this agreement to be executed by their proper officers in three or more parts, each part to be deemed an original, as of the day and year first above written.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,

By ——— ———, *President & General Manager.*

Attest:

——— ———, *Secretary.*

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

THE MISSOURI PACIFIC RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

81 ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

WABASH RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

VANDALIA RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

82 ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

SOUTHERN RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

ILLINOIS CENTRAL RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

THE CHICAGO AND ALTON RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

83

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

THE CHICAGO AND ALTON RAILROAD COMPANY,

By ——— ———, *President.*

Attest:

——— ———, *Secretary.*

84

EXHIBIT 10.

REORGANIZATION AGREEMENT BETWEEN TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS AND PROPRIETARY LINES.

This agreement made this the 22nd day of August, 1912, between the Terminal Railroad Association of St. Louis (hereinafter called Terminal Company) party of the first part; St. Louis Southwestern Railway Company, The Missouri Pacific Railway Company, St. Louis, Iron Mountain and Southern Railway Company, Wabash Railroad Company, Vandalia Railroad Company, Baltimore and Ohio Southwestern Railroad Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Louisville and Nashville Railroad Company, St. Louis and San Francisco Railroad Company, The Chicago, Rock Island and Pacific Railway Company, Southern Railway Company, Illinois Central Railroad Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and Missouri, Kansas and Texas Railway Company, parties of the second part (hereinafter called proprietary companies); and the Chicago, Burlington and Quincy Railroad Company, The Pittsburgh, Cincinnati, Chicago and St. Louis Railway Company, and The Chicago and Alton Railroad Company, parties of the third part (hereinafter called guarantors), witnesseth:

Whereas the Supreme Court of the United States, in its
85 opinion in the case of United States of America versus Terminal Railroad Association of St. Louis and others, and the decrees therein entered pursuant to said opinion by the District Court within and for the Eastern Division of the Eastern District of Missouri (to which reference is hereby made), determined that the III, XVII, and XIX paragraphs of the agreement made and entered into on October 1st, 1889, by and between terminal company and the Missouri Pacific Railway Company and several other railroad companies therein mentioned and called proprietary companies were in certain respects in violation of the statute of the United States subsequently enacted; and

Whereas since the date of said agreement several of the above-named parties of the second part have, pursuant to the terms of that agreement, been admitted as parties thereto; and

Whereas the aforesaid guarantors did by certain special agreements guarantee the performance of the contract of October 1st, 1889, between the Terminal Railroad Association and The Chicago & Alton Railway Company, and the Chicago, Burlington & Quincy Railway Company, and The Vandalia Railroad Company; and

Whereas it is the desire of the guarantors that their guaranties so respectively and singly made shall continue in respect of the agreement between the parties of the first and second part, as amended herein.

Now, therefore, pursuant to and in accordance with said decrees aforesaid, it is agreed as follows:

I.

It is agreed that paragraph XIX of said contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and
86 certain of the defendant railroad companies therein named as parties of the second part, which reads as follows:

"XIX. This agreement may be executed in counterparts, and any railroad company not named herein as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine and on signing this agreement, or any counterpart thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named as second party thereto," is hereby cancelled and made of no further force or effect and in lieu thereof:

It is now agreed between the parties hereto as follows:

(a) That in case any other railroad company not named as second party hereto shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner, or user, as herein provided for, and the terminal company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States, within and for the
87 Eastern Division of the Eastern District of Missouri, upon a petition filed in a certain cause in said court, entitled "The United States of America versus The Terminal Railroad Association of St. Louis et als., No. 5250, equity docket," but any judgment or decree that may be entered therein shall be subject to review by appeal or writ of error in the usual manner.

II.

It is further agreed that paragraph III, of said contract dated October 1st, 1889, which reads as follows:

"III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of

joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis and pay therefor as herein provided," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

In consideration of the foregoing each of the proprietary companies (parties of the second part) for itself only, and not for others, accepts the right of joint use herein before granted by the first party, and hereby covenants and agrees that it will pay therefor as herein provided.

III.

It is further agreed that paragraph XVII of said contract, dated October 1st, 1889, which reads as follows:

"Neither party hereto shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them to any other company or companies, without the unanimous consent of the board of directors of the first party," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

88 "Neither party shall underlet the rights and privileges hereby granted, or any of them, to any other company or companies."

IV.

It is further agreed as follows:

(a) It is agreed that hereafter traffic destined to St. Louis, in the State of Missouri, or to points west of the Mississippi River, and destined to be transported through the St. Louis gateway, or traffic destined from the city of St. Louis to points east of the Mississippi River, shall not be billed to East St. Louis, in the State of Illinois, or other junction points, or terminals, of either of said railroad companies which are east of the Mississippi River and then rebilled to St. Louis or points beyond, as aforesaid, but for all such traffic each railroad shall issue through bills of lading unless otherwise directed by the party controlling such traffic.

(b) It is further agreed that the Terminal Railroad Association, party of the first part, and defendant railroad companies, parties of the second part, shall not make any special or so-called arbitrary charge in respect of the traffic originating within the so-called 100-mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

(c) Nothing contained in the preceding clauses (a) and (b) of this paragraph shall be deemed or taken to affect in anywise, or at any time, the power of the Interstate Commerce Commission over the rates to be charged by the terminal company, or any of the rail-

road companies, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over is lines, or any other power conferred upon such commission by law.

V.

It is further agreed as follows:

That each and every provision in the contract dated Octo-
89 ber 1st, 1889, and all contracts made subsequent thereto between the said Terminal Railroad Association of St. Louis and its codefendant railroad companies, which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect.

In witness whereof, the parties hereto have caused this agreement to be executed by their proper officers, in three or more parts, each part to be deemed an original, as of the day and year first above written.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
[SEAL.] By W. S. MCCHESNEY, JR.,
President & General Manager.

Attest:
C. A. VINNEDGE,
Secretary.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
[SEAL.] By F. H. BRITTON, *President.*

Attest:
G. K. WARNER,
Asst. Secretary.

THE MISSOURI PACIFIC RAILWAY COMPANY,
[SEAL.] By B. F. BUSH, *President.*

Attest:
F. W. IRLAND,
Asst. Secretary.

ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
[SEAL.] By B. F. BUSH, *President.*

Attest:
F. W. IRLAND,
Asst. Secretary.

90 WABASH RAILROAD COMPANY,
By F. A. DELANO, *President.*
[SEAL.]

Attest:
E. B. PRYER,
Asst. Secretary.

VANDALIA RAILROAD COMPANY,
[SEAL.] By J. J. TURNER, *Vice President.*

Attest:
S. B. LIGGETT,
Secretary.

BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY,
[SEAL.] By DANIEL WILLARD, *President.*

Attest:
G. F. MAY,
Asst. Secretary.

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
[SEAL.] By W. K. VANDERBILT, JR., *Vice President.*

Attest:
E. F. STEPHENSON,
Asst. Secretary.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
[SEAL.] By M. H. SMITH, *President.*

Attest:
J. H. ELLIS,
Secretary.

91 ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,
By B. J. WINCHELL, *President.*
[SEAL.]

Attest:
F. H. HAMILTON,
Secretary.

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
[SEAL.] By H. U. MUDGE, *President.*

Attest:
GEO. H. CROSBY,
Secretary.

SOUTHERN RAILWAY COMPANY,
[SEAL.] By W. W. FINLEY, *President.*

Attest:
R. D. LANKFORD,
Secretary.

ILLINOIS CENTRAL RAILROAD COMPANY,
[SEAL.] By C. H. MARKHAM, *President.*
Attest:
BURT A. BECK,
Asst. Secretary.

THE CHICAGO AND ALTON RAILROAD COMPANY,
[SEAL.] By B. A. WORTHINGTON, *President.*
Attest:
H. E. R. WOOD,
Asst. Secretary.

92 CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
[SEAL.] By GEO. B. HARRIS, *President.*
Attest:
H. E. JARVIS,
Secretary.

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,
[SEAL.] By C. E. SCHAFF, President.
Attest:
F. JOHNSON,
Secretary in Missouri.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
[SEAL.] By D. MILLER, *President.*
Attest:
T. S. HOWLAN,
Secretary.

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
[SEAL.] By EDW. B. TAYLOR, *Vice President.*
Attest:
S. B. LIGGETT,
Secretary.

THE CHICAGO AND ALTON RAILROAD COMPANY,
[SEAL.] By B. A. WORTHINGTON, *President.*
Attest:
H. E. R. WOOD,
Secretary.

93 UNITED STATES OF AMERICA,
Eastern Division of the Eastern
Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the writing hereto attached is a

true copy of proposed agreement in conformity with mandate of U. S. Supreme Court, filed August 26th, 1912, in case No. 5250 of United States of America, complainant, vs. Terminal Railroad Association of St. Louis et al., defendants, as fully as the same remains on file in said case in my office.

In witness whereof I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in the Eastern Division of said district, this 26th day of August, in the year of our Lord nineteen hundred and twelve.

W. W. NALL,
Clerk of said Court.
[SEAL.] By EDWARD W. TOBIN, *Deputy.*

94 EXHIBIT 11.

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS and others, defendants.

PROPOSED FINAL DECREE.

On appeal from a decree dismissing the bill of complainant herein, the Supreme Court of the United States reversed said decree, with directions to enter a decree in conformity with the opinion of said court, the mandate whereof was filed in this court on June 3, 1910.

On June ———, 1910, the solicitor for the plaintiff filed and presented to the district judge the following motion for a preliminary decree, as required by said opinion, viz:

[Copy motion.]

Whereupon, on the 11th day of June, 1912, the court, acting through the district judge, made the following order, viz:

[Here copy interlocutory decree on mandate.]

Thereupon, on the 9th day of ——— ——, 1912, the defendants
95 presented to the court, the district judge sitting, the two following plans, pursuant to said preliminary order and the opinion of the Supreme Court, viz:

[Here copy Plans I and II.]

Which said plans, and each of them, were by the court, rejected, and in lieu thereof the following plan was prescribed by the court and under protest accepted by defendants, to wit:

[Here copy plan.]

Thereupon, pursuant to said plan, the defendants presented the following form of contract, to be executed pursuant to said plan, which was by the court approved, to wit:

[Copy form of contract.]

The defendants now present to the court contracts executed in the form approved heretofore by the court, and it is thereupon accordingly ordered that the same be, and it is hereby, approved as being in compliance with the orders heretofore entered herein and the opinion of the Supreme Court of the United States.

It is further ordered, adjudged, and decreed that defendants, and each of them, be, and they are hereby, enjoined and restrained from refusing to admit any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. From refusing to permit the use of the terminal facilities of the Terminal Railroad Association by any other railroad not electing to become a joint owner thereof upon such just and reasonable terms and regulations as will in respect of use, character,
and cost of services place it upon as nearly an equal plane as
96 may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. From the practice of billing to East St. Louis or other junction points and then rebilling the traffic destined to St. Louis or points beyond unless otherwise directed by the party controlling such traffic.

Fourth. From making any special or so-called arbitrary charge in respect of the traffic originating within the so-called one-hundred mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

And further, generally, from violating any of the terms or provisions of the contract between the defendants hereinbefore approved by the court. Nothing, however, contained in this decree shall be deemed or taken to affect, in any wise or at any time, the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association of St. Louis or the mode of billing traffic passing over its lines or any other power conferred upon such commission by law.

97 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

INTERLOCUTORY DECREE ON MANDATE.

This cause came on to be heard at this term on the motion of the United States that an interlocutory decree be entered pursuant to

the opinions of the Supreme Court reported in 224 U. S., 382, 411, and 226 U. S., 420. The United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of this court dismissing this cause on June 8, 1910, and the Supreme Court of the United States at its October term, 1911, having heard the appeal upon a transcript of the record and having thereupon, on the 22nd day of April, 1912, ordered, adjudged, and decreed that the said decree of this court in this cause be reversed and that said cause be remanded to this court for further proceedings in accordance with the mandate of the Supreme Court in this cause bearing date May 23, 1912, which was recorded in this court on June 3, 1912, the Honorable Jacob Trieber, United States district judge, on June 11, 1912, entered an interlocutory decree pursuant to the mandate, but subsequently, on the petition for a writ of prohibition, the Supreme Court of the United
98 States rendered a decision to the effect that he was without jurisdiction to render such decree and that this case could be considered and determined only by a court composed of circuit judges in accordance with the provisions of the expedition act, chap. 544, 32 Stat., 823.

Now, therefore, in obedience to the mandate of the Supreme Court and in accordance with the opinions of that court, to which reference has been made, it is hereby ordered, adjudged, and decreed that the interlocutory decree hereinbefore rendered on June 11, 1912, by the Honorable Jacob Trieber, district judge, be, and the same is hereby, set aside and for naught held pursuant to the opinion of the Supreme Court: that within sixty days after the entry of this decree the Terminal Railroad Association of St. Louis and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have become comembers with the fourteen defendant railroad companies, if any, shall submit to this court a plan, upon which the defendants herein shall have agreed, for the reorganization of the contracts, agreements, arrangements, and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between the Terminal Railroad Association of St. Louis, Missouri, and its fourteen codefendant railroads, as aforesaid, as will make said contracts conform in all respects to the terms and conditions hereinafter mentioned.

First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

99 Second. Such plan or reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place every such company as nearly on an equal plane as

may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the terminal company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then rebilling traffic destined to St. Louis or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called one hundred mile area that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to this court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. It is further ordered, adjudged, and decreed that the said parties also present at the same time a proposed form of final decree in accordance with the directions of the Supreme Court in its
100 mandate and opinion, which shall contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the terminal company, or the mode of billing traffic passing over its lines, or the establishing of joint rates or routes over its lines, or any other power conferred by law upon such commission.

Eighth. Upon the failure of the parties defendant to come to an agreement within sixty days from the entry of this decree which is in substantial accord herewith, the court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between terminal company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems or their related constituent companies, through lease, purchase, or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

WALTER H. SANBORN,
WALTER I. SMITH,
Circuit Judges.

APRIL 30, 1913.
Received and filed and entered June 16, 1913.

W. W. NALL, *Clerk.*

101 In the District Court of the United States for the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

SANBORN, Circuit Judge:

The United States moves the court to enter the preliminary decree in this case specified in the opinion of the Supreme Court in 224 U. S., 410, to the effect that the defendants present for the consideration of this court a proposed reorganized contract and final decree. We agree and shall insist that the true intent and meaning of the direction of the Supreme Court that "any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one-hundred-mile area that is not equally and in like manner applied in respect of all other traffic of like character originating outside of that area," shall be abolished and of every other direction of that court in its opinion and mandate in this case must be carried into complete effect by the new contract and the final decree. In our opinion the interlocutory decree now to be entered as clearly so directs as does the opinion and mandate of the Supreme Court.

102 The question presented by the motion now in hand is not what the final decree shall be, nor by what terms the abolition of the so-called arbitrary shall be effected. Counsel for the respective parties do not agree regarding the present existence of the character of this so-called arbitrary, nor upon the provisions of the final decree by which it should be abolished, and they ask a full hearing upon these questions before they are decided and before the terms of the contract and final decree are settled. Counsel for the United States in their last brief state that the Government submits it "with the understanding that the final decree is not now under consideration" and "requests that it be given an opportunity to be heard upon the question of what the final decree shall contain."

We are of the opinion that this request should be granted, that, after a proposed contract and final decree are submitted to this court, pursuant to the interlocutory decree and before the crucial issues now pending are decided, and before we form or express our final opinion concerning them, counsel for the parties should be heard upon them after they know that the hearing is not preliminary, but final. Hence we decline to enter upon a discussion or decision of the merits of the main issues now remaining in this case and, except as stated above, and in the interlocutory decree, we decline either to adopt or to repudiate the views attributed to us by our learned associate, Judge Hook. Indeed, we endeavor, and shall endeavor until after the final hearing upon the terms of the contract and of the final decree, to keep our minds open and to avoid the formation or expression of our

opinion upon these issues, because this case is here now on a mere motion to enter the preliminary decree directed by the Supreme Court to the effect that "the parties submit to the court
103 within ninety days after receipt of the mandate, a plan of reorganization of the contract between the fourteen defendant railroad companies and the Terminal Association," which is required to contain the six provisions specified in the interlocutory decree filed herewith, and that decree in our judgment completely effectuates the direction of that court regarding this preliminary decree. It will be early enough to consider and determine the terms and provisions of the proposed contract and of the final decree when they have been presented for our consideration and after final hearing of the parties have been submitted to us for decision.

104 In the District Court of the United States for the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
v.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

HOOK, Circuit Judge:

A difference has arisen between my brothers and myself over the meaning of the opinion and mandate of the Supreme Court in this case. It comes in this way: On February 25, 1913, the Government filed and presented to us two motions. The first to vacate an order of September 3, 1912, declining, by an equal division of the circuit judges, to take further cognizance of the case, the Supreme Court having subsequently held that the jurisdiction of those judges still continued and should be exercised. The other was entitled "Motion for filing of mandate and entry of interlocutory decree." This is the motion which presents the matters now before us. The Government tendered with the motion a form of interlocutory decree, which it asked us to adopt and enter, enjoining the defendants from continuing to impose certain special charges as being wrongful and contrary to the decision of the Supreme Court (224 U. S., 383). At the hearing of the motion defendants insisted that a form
105 previously approved by the district judge (without jurisdiction, 226 U. S., 420) was the proper one. It contained no injunction, left the defendants free to continue their practice, and remitted the matter in general terms to a subsequent modification of the contracts between the defendants. The Government earnestly objected to that form of interlocutory decree as insufficient to give the relief the Supreme Court intended it should have. There was an exhaustive discussion in open court involving the interlocutory decree proposed by the Government, the meaning of the opinion of the Supreme Court, whether what defendants were still doing was contrary

to that opinion and if so should be enjoined by the interlocutory decree, or on the other hand should be merely abolished by subsequent contract between the defendants. At the conclusion of the arguments we made an order, of which the following is the pertinent part, the italics being mine:

"And the said complainant further files and presents to the court a motion to vacate the order entered herein on September 3d, 1912, together with a motion for the filing of the mandate of the Supreme Court and for the entry of the interlocutory decree in the form now tendered; whereupon the court after hearing the arguments of counsel for the respective parties doth order that the said defendants be, and they are hereby, allowed five days from this date to file any objections and brief in opposition to the said form of interlocutory decree, and that the said complainant be, and it is hereby, allowed five days thereafter for reply thereunto; whereupon the said motions shall be taken as submitted to the court."

The briefs furnished under this order also contain a
106 full discussion, particularly as to whether the continued practice of defendants had been condemned by the Supreme Court and should be enjoined. As will be shown presently, counsel for defendants openly and candidly stated in their brief what they were still doing, but contended it was consistent with the opinion of the Supreme Court. The Government contended in its brief that the practice was condemned by the opinion and that the interlocutory decree it proposed was drawn on that theory. I do not think I am mistaken in saying that my brothers sustain defendants in their contention. Their view is not fully expressed, but it is foreshadowed in the interlocutory decree about to be entered. That decree is substantially in the form of one entered by the district judge which we vacated. It contains no injunction or award of the relief against the continued imposition of the special rates and charges sought by the Government in its proposed form of interlocutory decree.

I therefore deem it proper and timely to put upon the record what I think the Supreme Court said and intended and a recital of what the defendants are still doing. It is not premature. It is in response to the motion of the Government submitted to us after full argument. I know of no request that our decision be delayed for further argument at final decree. Certainly nothing of the kind appears in the briefs on file. This matter should not be confused with the plan hereafter to be submitted to us for reorganizing the combination of the defendants and reforming the contracts among themselves. That is for the final decree and there is little disagreement and no difficulty about it. When counsel for the Government, by way of precaution,
said in their brief that the final decree was not under consider-
107 ation and that they wished an opportunity to be heard upon its contents, they were addressing themselves to a statement of opposing counsel that the district judge intended to enter a final decree which would be "merely in effect a recital of the order of the Supreme Court." They were not asking that our decision upon their

motion and the injunctive provisions of the interlocutory decree so fully presented and argued, be postponed for a further argument. They can not reasonably be put in that position. The question of injunction is up for decision now. The combination known as the terminal association is still acting as a terminal agency. The Supreme Court holds that while doing so certain special or arbitrary charges can not lawfully be made. If what defendants admit is still being done is wrong, it is wrong now, and the Government is entitled to an injunction at this time and to know definitely just what is enjoined. An injunction is a very proper function of an interlocutory decree when, as here, the facts are admitted and the law has been finally and authoritatively settled by the court of last resort. Nor does it make against this that the injunction may also be carried into a final decree subsequently to be entered. So I say again a decision having been invoked is both timely and proper. If I have misapprehended the position of my brothers what I shall say will at least serve the parties as a guide in preparing the final decree in respect of those things already presented, argued, and submitted, but passed by. I will not discuss or prejudge any disputed question about the "plan of reorganization" to be submitted and determined at final decree. Reference thereto will be made only so far as there is no controversy and to illustrate those matters which I think
108 should be settled now. Within the above limits the following conclusions from the opinion of the Supreme Court seem clear:

1. The Terminal Railroad Association of St. Louis is a combination prohibited by the Sherman Antitrust Act if its constituents (the various bridge and terminal companies) are to be regarded as transportation companies or are operated as such.

2. The association may be upheld, however, as a lawful unification of terminal facilities (as distinguished from ordinary transportation railroads) upon (*a*) certain modifications of the articles of agreement with the proprietary railroad companies, and (*b*) stopping certain administrative practices. These conclusions of the Supreme Court were due in substantial measure to the exceptional topographical situation at St. Louis and vicinity and they would not necessarily apply elsewhere. Cases elsewhere are not necessarily precedents here.

3. The articles of agreement are to be so modified that any existing or future railroad may be admitted to joint ownership or control of the combined terminal properties upon just and reasonable terms securing equality in benefits and burdens with the present proprietary companies; to allow the use of the facilities upon just and reasonable terms and regulations by any railroad not desiring to become a joint owner; and to eliminate from the agreement any provision restricting the proprietary companies to the use of those facilities. And provision is to be made for the submission to this court of certain controversies growing out of the foregoing. Compliance with the above requires merely the contractual action of the defendants.

109 4. The opinion of the Supreme Court also requires "an inhibition of certain methods of administration." Obviously, in this as in all cases of like character, the inhibition of wrongful practices should be by injunctive decree and not left to rest solely upon stipulations in a contract. The wrongful practices of defendants pointed out by the Supreme Court were directed against the public, not parties to the contract, and it would be quite anomalous if upon a showing in the future that defendants were persisting in them the court should be without punitive power, but could merely declare a breach of contract. As to these I think the opinion of the Supreme Court means that an injunction should be awarded. As the facts are admitted and the law settled the injunction when asked should be granted and not postponed to final decree.

5. The practices referred to are described in the fourth and fifth paragraphs of the directions for a decree set forth in the opinion as follows:

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

The principal difference between my brothers and myself, as well as between counsel, is over the meaning of the last of these paragraphs. I think that when read, as it should be, in the light of
110 the entire opinion and the record in the case the meaning is quite clear. But whoever is right I take it as highly desirable that the prohibition be expressed in the decree with such detail gathered from the opinion and record that no doubt can reasonably be entertained of its scope and purport. This is especially important in a case of injunction, a violation of which may be followed by punishment; or if it be not done, then that the decree be accompanied by an opinion indicating definitely the attitude of this court, to the end that the parties may conduct themselves accordingly. To put the precise words of the fifth paragraph in the decree without more, as is proposed, does not end the case, but establishes a starting point for further controversy and litigation.

7. In considering the fifth paragraph it should be borne in mind that the Supreme Court holds that the Terminal Association can lawfully operate only as a terminal agency of the various carrying railroads. As such it may make the usual charges for terminal services like switching and warehousing, but it cannot lawfully interpose itself as a transportation company between western roads in St. Louis, Missouri, and the eastern roads in East St. Louis, Illinois, and make charges for service of that character. It logically results from this that the two cities (and certain towns to which for brevity no fur-

ther reference need be made) constitute one commercial and manufacturing center connected and served by an aggregation of terminal facilities in which all the railroads are or may be interested and which all may use. As regards transportation rates the several localities of this industrial center should be upon a parity without discrimination, arbitrary or differential; otherwise the
111 association becomes at once an unlawful combination of carrying railroads. The prohibition in the fourth paragraph of the practice of requiring shippers to rebill at East St. Louis the traffic destined to St. Louis or beyond is in line with this view; also the court's references to the exceptional physical situation in that locality. The testimony before the Supreme Court discloses the conditions to which the fifth paragraph is directed. It shows that no distinction was being made between St. Louis and East St. Louis in respect of rates on traffic originating or destined outside of an irregular area about those cities having a radius of approximately one hundred miles. In respect of those rates the cities were one. Mr. Perkins, the witness referred to in the opinion, said by way of example: "A shipment coming from say Kansas City to St. Louis has the same rate as a shipment coming from Kansas City to East St. Louis." He also said the two cities were on a parity as regards rates on west-bound shipments from points outside the area referred to. But the situation was entirely different as to rates on traffic originating and ending within the limited area. Concerning these Mr. Perkins testified as follows:

"But the basis of rates between St. Louis and points within the one hundred mile radius east of here is higher than between East St. Louis and those points, taken by itself. The basis of rates between East St. Louis and the points within one hundred miles west of here is higher than the basis of rates between St. Louis and points west of here."

The report of the municipal bridge and terminal commission to the municipal assembly of St. Louis on February 11, 1908, contains this paragraph:

112 "In the report of May 24, 1907, reference was made to an arrangement perfected at a meeting between the executive traffic officers of eastern lines and your commission on April 19, 1907, for the removal of the last of the bridge arbitrary differentials on business between St. Louis and points beyond a 100-mile radius. That arrangement has now been carried out."

In view of some contentions of defendants' counsel which will be presently mentioned, three things about the above excerpt may be noted: First, the charge in question is referred to as a "bridge arbitrary differential"; second, the charge was removed from business outside the 100-mile radius; and, third, the removal was effected by arrangement with "eastern lines," not with the Terminal Association. Counsel assert the right of defendants to continue within the 100-mile area the additional charge as between the two cities which was

removed outside, and in this, as I understand it, they are upheld by my brothers. Counsel for defendants say in their brief:

"We understand it to be true that the railroad companies, parties to the case, make a higher charge for St. Louis than East St. Louis on some traffic originating within the so-called one hundred mile area. There is a zone beyond the one hundred mile area, in which the entire charge for the use of terminal facilities of the terminal association is absorbed in the through railroad rates, making the East St. Louis rate applicable to industries on the Terminal Association and railroads in St. Louis."

113 They contend this was not what the Supreme Court had in mind, but since the record shows no other existing condition to which the fifth paragraph could apply they are driven to the suggestion that the Supreme Court labored under a misapprehension, because the charge now made is not an arbitrary and is not imposed by the Terminal Association, but by the railroads. It is not important what this charge for transportation across the river between St. Louis and East St. Louis may be called. In the testimony it was referred to interchangeably as an arbitrary, a differential, and a special charge. The Supreme Court referred to it as "a special or so-called arbitrary charge." Mr. Perkins said: "It makes no difference whether you call it arbitrary or differential, or what, it is an amount paid." And as we have seen the terminal's commission referred to like charges on traffic coming from or destined outside the area as "bridge arbitrary differentials." It is equally unimportant that instead of being imposed by the Terminal Association, as was once the case, it is now being added by the proprietary railroads to their freight rates. In either case it is not a terminal switching charge, but is a transportation charge as to which the two cities are not upon a parity. The combination of terminal facilities at St. Louis cannot lawfully operate or be operated as carrying railroads. The record before the Supreme Court showed clearly that when the testimony was taken the special charge was not being made as a separate, distinct item, but was added to and included in the freight rate within the 100-mile area. Mr. Perkins testified that it was still there. I think the Supreme Court was dealing with the situation so disclosed and with substance, not form. Whether imposed by

114 the Terminal Association as an agency or by the proprietary railroads as principals the arbitrary was equally objectionable as a transportation charge and worked a burden on the commerce of St. Louis. I repeat here the direction of the Supreme Court: "The abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of the traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area." In applying this effect must be given to the phrase "equally and in like manner."

By the opinion and mandate the Supreme Court defined the permissible character of the Terminal Association as a combination of

terminal facilities reaching and serving a common commercial and manufacturing center; directed changes in its organization to adapt it to local conditions; conceded the right to charge and collect for proper terminal services; denied the right in it or its proprietors to charge and collect transportation rates for carriage across the river as though the cities were distinct communities; and directed the inhibition of certain practices not in harmony with the above. Having so fixed the status of the parties the Interstate Commerce Commission was left free for the exercise of its jurisdiction.

Filed June 16th, 1913.

W. W. NALL, *Clerk.*

115 *Motion of complainant for leave to file exceptions to interlocutory decree, order for filing of said exceptions, and said exceptions.*

In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

Comes now the complainant herein and asks leave of the court to file the accompanying exceptions to the interlocutory decree heretofore entered in this case.

EDWARD C. CROW,
Special Assistant to the Attorney General.

116 In the District Court of the United States in the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

After consideration of the application for leave to file exceptions to the interlocutory decree,

It is hereby ordered, that the said application be granted and that the exceptions to the interlocutory decree herein be filed with the clerk of this court.

WALTER H. SANBORN,
U. S. Circuit Judge.

ST. PAUL, MINN., *June 25, 1913.*

117 In the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al, defendants.

Comes now the complainant herein and excepts to the interlocutory decree entered herein for the following reasons:

First. Because the opinion of the Supreme Court required the parties to the litigation, the complainant and the defendants, to submit a plan for the reorganization of the contracts and agreements and the use and operation of the terminal facilities of the defendants, while the interlocutory decree only requires the defendants to agree among themselves upon such a plan.

Second. Because the Supreme Court decided that upon the record the complainant was entitled to be relieved of the discriminatory "arbitrary" charge imposed upon St. Louis, Missouri, traffic, and as this is a matter of public concern and a continuing violation of the law, the complainant is entitled to relief by injunction pending the entry of a final decree.

The imposition of this arbitrary charge being a matter of public and not private concern, and being found to be illegal by the Supreme Court, its abolition and continued prevention should not be left to a contract to be agreed upon wholly by the defendants, and the protection of the public against the continuance of the imposition
118 of the wrongful charge should not be and was not intended by the Supreme Court to be left to rest completely in an agreement of the defendants not to continue the wrong. The interlocutory degree should, by injunction, prevent and enforce the continued prevention of the wrongful imposition of the "arbitrary" charge upon interstate St. Louis, Missouri, traffic.

And because the interlocutory decree fails to enjoin the imposition now or to provide in the future for an injunction against the imposition of the illegal "arbitrary" charge on St. Louis, Missouri, commerce, complainant excepts to the same.

Third. The Supreme Court found the practice of billing traffic destined to St. Louis, Missouri, to East St. Louis, Ilinois, and rebilling the same to St. Louis, Missouri, illegal and directed its discontinuance, and as this is a matter of pubic concern and the decree is intended to prevent a continued violation of the law in this respect, the interlocutory decree should have enjoined the practice of billing referred to above and should not have left it to be remedied only by a contract between the defendants; and, therefore, the complainant for this reason also excepts to the interlocutory decree.

Fourth. The Supreme Court found the clause of the agreement between the defendants requiring unanimous consent to the admis-

sion of other companies to the Terminal Railroad Association was illegal. This being so, the interlocutory decree should direct that this clause be removed from all agreements between the defendants. As the interlocutory decree does not require the elimination of this clause for unanimous consent for admission of other companies, complainant excepts to the said interlocutory decree.

Fifth. The complainant further excepts to the interlocutory decree because the opinion of the Supreme Court clearly shows it intended the interlocutory and final decrees should by specific direction
119 protect the interstate commerce of St. Louis, Missouri, against discrimination by the defendants and prevent the defendants from continuing the monopoly of interstate commerce at St. Louis, Missouri, as found to exist and pointed out by the Supreme Court; and the interlocutory decree fails to specifically carry out the above direction of the Supreme Court.

Sixth. Complainant further excepts to paragraph five in the interlocutory decree because it is merely a recital of the order of the Supreme Court and does not define and point out in what manner the defendants should conduct interstate traffic so as to abolish the "arbitrary" charge as to traffic originating within the so-called one-hundred-mile zone and there is not set out a clear, definite, and effective method of handling the traffic by the defendants so as to eliminate the violation of law found to exist by the imposition of the "arbitrary" charge.

EDWARD C. CROW,
Special Assistant to the Attorney General.

(Endorsed:) Filed July 8, 1913. W. W. Nall, Clerk.

120 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT, *vs.* THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL., DEFENDANTS.	No. 5250. In Equity.

Plan of reorganization.

Come now the defendants in the above cause, and also the St. Louis Southwestern Railway Company (which has become a member of the defendant, Terminal Railroad Association of St. Louis, since the institution of this suit, with the said fourteen defendant railroad companies), pursuant to the interlocutory decree herein entered on June 16, 1913, requiring them, within sixty days after the entry of this decree, to "submit to this court a plan, upon which the defendants herein shall have agreed, for the reorganization of the contracts, agreements, arrangements, and leases, and the use and opera-

tion of the properties and terminal facilities of the defendants herein, between the Terminal Railroad Association of St. Louis, Missouri, and its fourteen codefendant railroads, as aforesaid, as will
121 make said contracts conform in all respects to the terms and conditions hereinafter mentioned.

"First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

"Second. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place every such company as nearly on an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

"Third. By eliminating from the present agreement between the terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the terminal company.

"Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

"Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called one-hundred-mile area that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

"Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to this court upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Seventh. It is further ordered, adjudged, and decreed that
122 the said parties also present at the same time a proposed form of final decree in accordance with the directions of the Supreme Court in its mandate and opinion, which shall contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the terminal company, or the mode of billing traffic passing over its lines, or any other power conferred by law upon such commission";

And would respectfully represent and show unto the court that, pursuant to an order heretofore entered herein, on July 9, 1912, by the honorable district judge of said court, in the substantial terms of the order now made by this court, but which has since been vacated, they made and executed the contract hereto attached and

marked "Exhibit A," which they present as a plan, pursuant to the said interlocutory decree.

Wherefore, they pray the court to accept said contract so executed as aforesaid by them, and which they now affirm as a plan required by the interlocutory decree of this court; and that said plan and said contract, as executed and on file in this court, be adjudged and decreed by this court as a compliance with the terms of the interlocutory decree herein entered on June 16, 1913.

And the said defendants, pursuant to the interlocutory decree herein, further present a draft of the final decree in said cause as conformable to the order of this court, said draft of final decree is hereto attached, marked "Exhibit B."

H. S. PRIEST,
T. M. PIERCE,
Attorneys for Defendants.

123 EXHIBIT A.

REORGANIZATION AGREEMENT BETWEEN TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS AND PROPRIETARY LINES.

This agreement, made this the 22nd day of August, 1912, between the Terminal Railroad Association of St. Louis (hereinafter called Terminal Company), party of the first part; St. Louis Southwestern Railway Company, The Missouri Pacific Railway Company, St. Louis, Iron Mountain and Southern Railway Company, Wabash Railroad Company, Vandalia Railroad Company, Baltimore, and Ohio Southwestern Railroad Company, Cleveland, Cincinnati, Chicago and St. Louis Railway Company, Louisville and Nashville Railroad Company, St. Louis and San Francisco Railroad Company, The Chicago, Rock Island and Pacific Railway Company, Southern Railway Company, Illinois Central Railroad Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and Missouri, Kansas and Texas Railway Company, parties of the second part (hereinafter called proprietary companies); and the Chicago, Burlington and Quincy Railroad Company, The Pittsburgh, Cincinnati, Chicago and St. Louis Rail-
124 way Company, and The Chicago and Alton Railroad Company, parties of the third part (hereinafter called guarantors), witnesseth:

Whereas the Supreme Court of the United States, in its opinion in the case of United States of America versus Terminal Railroad Association of St. Louis and others, and the decrees therein entered pursuant to said opinion by the District Court within and for the Eastern Division of the Eastern District of Missouri (to which reference is hereby made), determined that the III, XVII, and XIX paragraphs of the agreement made and entered into on October 1st, 1899, by and between Terminal Company and the Missouri Pacific Railway Company and several other railroad companies therein men-

tioned and called proprietary companies, were in certain respects in violation of the statute of the United States subsequently enacted; and

Whereas, since the date of said agreement, several of the above-named parties of the second part have, pursuant to the terms of that agreement, been admitted as parties thereto; and

Whereas the aforesaid guarantors did by certain special agreements guarantee the performance of the contract of October 1st, 1889, between the Terminal Railroad Association and the Chicago & Alton Railway Company, and the Chicago, Burlington & Quincy Railway Company, and the Vandalia Railroad Company; and

Whereas it is the desire of the guarantors that their guaranties so respectively and singly made shall continue in respect of the agreement between the parties of the first and second parts, as amended herein,

Now, therefore, pursuant to and in accordance with said decrees aforesaid, it is agreed as follows:

125 I.

It is agreed that paragraph XIX of said contract entered into on or about the first day of October, 1889, between said Terminal Railroad Association of St. Louis, as party of the first part, and certain of the defendant railroad companies therein named as parties of the second part, which reads as follows:

"XIX. This agreement may be executed in counterparts, and any railroad company not named herein as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such consideration as they may determine, and on signing this agreement, or any counterpart thereof, thereby indicating its rights and duties in respect to the use of said terminal system to be the same, and none other, than the said proprietary companies named, as second party hereto," is hereby cancelled and made of no further force or effect, and in lieu thereof:

It is now agreed between the parties hereto as follows:

(a) That in case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service place

it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

126 (c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner, or user, as herein provided for, and the terminal company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States within and for the Eastern Division of the Eastern District of Missouri upon a petition filed in a certain cause in said court, entitled "The United States of America versus the Terminal Railroad Association of St. Louis et als., No. 5250, Equity Docket," but any judgment or decree that may be entered therein shall be subject to review by appeal or writ of error in the usual manner.

II.

It is further agreed that paragraph III of said contract, dated October 1st, 1889, which reads as follows:

"III. In consideration of the foregoing, each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis and pay therefor as herein provided," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

In consideration of the foregoing, each of the proprietary companies (parties of the second part), for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will pay therefor, as herein provided.

III.

It is further agreed that paragraph XVII of said contract dated October 1st, 1889, which reads as follows:

127 "Neither party hereto shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party," is hereby cancelled and made of no further force or effect, and in lieu thereof it is now agreed as follows:

"Neither party shall underlet the rights and privileges hereby granted, or any of them, to any other company or companies."

IV.

It is further agreed as follows:

(a) It is agreed that hereafter traffic destined to St. Louis, in the State of Missouri, or to points west of the Mississippi River, and destined to be transported through the St. Louis gateway, or traffic

destined from the city of St. Louis to points east of the Mississippi River, shall not be billed to East St. Louis, in the State of Illinois, or other junction points or terminals of either of said railroad companies which are east of the Mississippi River and then rebilled to St. Louis or points beyond, as aforesaid, but for all such traffic each railroad shall issue through bills of lading unless otherwise directed by the party controlling such traffic.

(b) It is further agreed that the Terminal Railroad Association, party of the first part, and defendant railroad companies, parties of the second part, shall not make any special or so-called arbitrary charge in respect of the traffic originating within the so-called 100-mile area about St. Louis that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

(c) Nothing contained in the preceding clauses (a) and (b) of this paragraph shall be deemed or taken to affect in anywise, or at anytime, the power of the Interstate Commerce Commission over the rates to be charged by the terminal company, or any of the railroad companies, or the mode of billing traffic passing over its
128 lines, or the establishing of joint through rates or routes over its lines, or any other power conferred upon such commission by law.

V.

It is further agreed as follows:

That each and every provision in the contract dated October 1st, 1889, and all contracts made subsequent thereto between the said Terminal Railroad Association of St. Louis and its codefendant railroad companies which is in conflict with the terms of this agreement, is hereby cancelled and made of no further force or effect.

In witness whereof the parties hereto have caused this agreement to be executed by their proper officers, in three or more parts, each part to be deemed an original, as of the day and year first above written.

TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS,
[SEAL.] By W. S. MCCHESNEY, JR.,
President & General Manager.

Attest:
C. A. VINNEDGE, *Secretary.*

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY,
[SEAL.] By F. H. BRITTON, *President.*
Attest:
G. K. WARNER, *Asst. Secretary.*

THE MISSOURI PACIFIC RAILWAY COMPANY,
[SEAL.] By B. F. BUSH, *President.*
Attest:
F. W. IRLAND, *Asst. Secretary.*

129 ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY,
[SEAL.] By B. F. BUSH, *President.*

Attest:
F. W. IRLAND, *Asst. Secretary.*

WABASH RAILROAD COMPANY,
[SEAL.] By F. A. DELANO, *President.*

Attest:
E. B. PRYOR, *Asst. Secretary.*

VANDALIA RAILROAD COMPANY,
[SEAL.] By J. J. TURNER, *Vice President.*

Attest:
S. B. LIGGETT, *Secretary.*

BALTIMORE AND OHIO SOUTHWESTERN RAILROAD COMPANY,
[SEAL.] By DANIEL WILLARD, *President.*

Attest:
G. F. MAY, *Asst. Secretary.*

CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
[SEAL.] By W. K. VANDERBILT, JR., *Vice President.*

Attest:
E. F. STEPHENSON, *Asst. Secretary.*

130 LOUISVILLE AND NASHVILLE RAILROAD COMPANY,
[SEAL.] By M. H. SMITH, *President.*

Attest:
J. H. ELLIS, *Secretary.*

ST. LOUIS AND SAN FRANCISCO RAILROAD COMPANY,
[SEAL.] By B. L. WINCHELL, *President.*

Attest:
F. H. HAMILTON, *Secretary.*

THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
[SEAL.] By H. U. MUDGE, *President.*

Attest:
GEO. H. CROSBY, *Secretary.*

SOUTHERN RAILWAY COMPANY,
[SEAL.] By W. W. FINLEY, *President.*

Attest:
R. D. LANKFORD, *Secretary.*

ILLINOIS CENTRAL RAILROAD COMPANY,
[SEAL.] By C. H. MARKHAM, *President.*

Attest:
BURT A. BECK, *Asst. Secretary.*

131 THE CHICAGO AND ALTON RAILROAD COMPANY,
[SEAL.] By B. A. WORTHINGTON, *President.*

Attest:
H. E. R. WOOD, *Asst. Secretary.*

CHICAGO, BURLINGTON AND QUINCY RAILWAY COMPANY,
[SEAL.] By GEO. B. HARRIS, *President.*

Attest:
H. E. JARVIS, *Secretary.*

MISSOURI, KANSAS AND TEXAS RAILWAY COMPANY,
[SEAL.] By C. E. SCHAFF, *President.*

Attest:
F. JOHNSON, *Secretary in Missouri.*

CHICAGO, BURLINGTON AND QUINCY RAILROAD COMPANY,
[SEAL.] By D. MILLER, *President.*

Attest:
T. S. HOWLAND, *Secretary.*

THE PITTSBURGH, CINCINNATI, CHICAGO AND ST. LOUIS RAILWAY COMPANY,
[SEAL.] By EDW. B. TAYLOR, *Vice President.*

Attest:
S. B. LIGGETT, *Secretary.*

132 THE CHICAGO AND ALTON RAILROAD COMPANY,
[SEAL.] By B. A. WORTHINGTON, *President.*

Attest:
H. E. R. WOOD, *Secretary.*

133 EXHIBIT B.

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
against
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS and others, defendants.

FINAL DECREE.

Come now the parties in the above entitled cause, and comes also the St. Louis Southwestern Railway Company, which has become a member of the Terminal Railroad Association of St. Louis since the institution of this suit, with the said fourteen defendant railroad companies, by their respective solicitors, and the court having heard them upon the mandate of the Supreme Court in this cause filed in this court on June 3, 1912, and the interlocutory decree filed herein by this court on June 16, 1913, and the plan and form of contract submitted to the court pursuant to said interlocutory decree of June 16, 1913, and all the parties defendant in this cause and said St. Louis Southwestern Railway Company having duly executed a contract, now on file, in obedience to said interlocutory decree of June 16, 1913, which contract is as follows.:

(Clerk here insert contract, "Exhibit A," to plan.)

134 It is now ordered, adjudged, and decreed that the defendants and each of them, and the said St. Louis Southwestern Railway Company be, and they are hereby, enjoined and restrained—

First. From refusing to admit any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. From refusing to permit the use of the terminal facilities of the Terminal Railroad Association by any other railroad not electing to become a joint owner thereof, upon such just and reasonable terms and regulations as will in respect to use, character, and cost of service place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

Third. From the practice of billing to East St. Louis or other junction points, and then rebilling the traffic destined to St. Louis or points beyond, unless otherwise directed by the party controlling such traffic.

Fourth. From making any special or so-called arbitrary charge in respect of the traffic originating within the so-called one hundred mile area about St. Louis that is not equally and in like manner

applied in respect of all other traffic of a like character originating outside of that area.

And further, generally from violating any of the terms or provisions of the contract between the defendants hereinbefore approved by the court.

Nothing, however, contained in this decree shall be deemed or taken to affect, in any wise or at any time, the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association of St. Louis, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred upon such commission by law.

(Endorsed:) Filed July 29, 1913. W. W. Nall, clerk.

135 *Motion for entry of final decree, and form of proposed decree.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

Comes now the complainant herein and moves the court to enter the attached copy of decree as and for the final decree in this cause.

(Signed) EDWARD C. CROW,
Special Assistant to the Attorney General.

136 In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6, 1910, and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the 22nd day of April, 1912, ordered, adjudged, and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be, and the same is hereby, reversed, and that said cause is remanded to this court for

further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date the twenty-third day of May, 1912.

And afterwards, to wit, it appearing that on the 16th day of June, 1913, a preliminary decree was entered in accordance
137 with the mandate of the Supreme Court, now, therefore, it is ordered, adjudged, and decreed by the court as follows:

That there shall be removed from the agreement known as "Exhibit A" in the record in this case, and executed October 1, 1889, between the Terminal Railroad Association of St. Louis as first party and the various named defendants herein as second party, clause XVII thereof reading as follows:

"Neither party shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party."

And also clause XIX, reading as follows:

"This agreement may be executed in counterparts, and any railroad company not named as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof, thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto."

And in lieu of paragraph XIX thereof an agreement in substantially the following form shall be made between the Terminal Railroad Association of St. Louis, Missouri, party of the first part, and any existing or future railroad company wishing to become a joint owner of the terminal properties in Missouri and Illinois and now held and operated or hereafter held and operated by the said Terminal Railroad Association:

138 "Whereas the Terminal Railroad Association of St. Louis, Missouri, has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the cities of St. Louis, Missouri, East St. Louis, Madison, Granite City, and Venice, Illinois, adapted and used for handling and interchanging interstate commerce and traffic; and

"Whereas the ——— ——— Company wishes to secure, in proper form and in perpetuity, a joint ownership in and a right to use said terminal properties now held, or hereafter to be acquired, by the Terminal Railroad Association of St. Louis, Missouri.

"Therefore, it is agreed for a valuable consideration between the parties as follows:

"First. That the Terminal Railroad Association of St. Louis, Missouri, does hereby agree to cause to be transferred and delivered ——— ——— shares of the capital stock of said terminal association,

said ——— shares being the proportion of such stock now held severally by each of the railroad companies owning the stock of the Terminal Railroad Association under the contract heretofore made with said association and said above-named proprietary owning railroad companies, and said Terminal Railroad Association does hereby admit said ——— ——— Company to the joint ownership and use with the present proprietary companies of all the above-named terminal facilities of the said Terminal Railroad Association of St. Louis, in like manner and to like extent with each and all of the said owning proprietary companies, it being the intent of this agreement that a joint and common ownership and joint use
139 of the above-named properties shall be had by the present proprietary owning railroad companies and ——— ——— Company to the end and in order that the said Terminal Railroad Association of St. Louis, Missouri, shall act as the impartial agent of the present proprietary owning railroad companies and ——— ——— Company.

"Second. In consideration of said transfer and delivery of said stock, and admission to membership as a proprietary line of said terminal company, the said ——— ——— Company accepts the right of joint ownership and use herein granted by said terminal company, and hereby covenants and agrees to pay its proper proportion of the following items as set out in the contract, known as agreement 'A,' between the Terminal Railroad Association of St. Louis, Missouri, as first party, and certain of the proprietary railroad companies named therein as proprietary companies, and executed October 1, 1889, to wit:

"1. Rental due to the bridge and tunnel companies under the lease heretofore described, as follows:

Interest on bridge bonds	$350,000
Dividend on bridge company first preferred stock	149,000
Dividend on bridge company second preferred stock	90,000
Dividend on tunnel railroad capital stock	75,000
To maintain corporate organization of bridge and tunnel companies	2,500

"2. Interest on all outstanding 4½ per cent bonds of the first party.

"3. Dividends on such bonds or preferred stock, not now contemplated, but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

"4. All taxes and assessments, premiums of insurance,
140 rentals on leaseholds, and expenses of every kind incurred in the maintenance, operation, repair, and renewal of said terminal system and every part thereof.

"5. A sum of money, not exceeding two thousand dollars in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party, and of any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

"Provided also that the basis of said adjustment of the above items to be paid by ——— ——— company shall be as follows: That is to say, the ——— ——— company shall pay such proportion of said above-named items as its business carried on, over, and upon said terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the terminal company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

"The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the board of directors of the said Terminal Railroad Association of St. Louis, Missouri: Provided, however, if the disagreement as to the proportion of use arises between a company applying to become a joint owner and the proprietary companies it may be submitted to the District Court of the United States for the Eastern Division of the Eastern District of Missouri upon a petition filed in this cause, subject
141 to review by appeal in the usual manner.

"Third. It is hereby declared to be the intention of the parties hereto, that said ——— ——— company as consideration for and upon acceptance of said stock and the execution of this agreement shall and hereby does become a party to the said agreement 'A' hereinbefore mentioned, with like force and effect as if it had been executed October 1, 1889, the date upon which said agreement was executed by the then parties thereto, save and except that the said ——— ——— company intends to and does hereby only become a party to the agreement of October 1, 1889, known as 'Exhibit A,' as modified and changed by the opinion of the Supreme Court of the United States herein, and it is intended to and does bind neither of said parties hereto except in so far as it is in accord and harmony with each and every part of said opinion and in compliance therewith.

"Fourth. The stock of said terminal company to be issued as herein contemplated shall in form and conditions of issue correspond in all respects with the certificates of stock heretofore severally issued to said proprietary companies.

"Fifth. Upon the execution and delivery hereof or so soon thereafter as can be conveniently done, two (2) shares of stock shall be transferred to such person as said ——— ——— company may designate as a director of said terminal company to represent the interests therein of said ——— ——— company and for the purpose only of qualifying such person as a director; and the remaining shares of stock to be issued to said ——— ——— company as herein contemplated shall be transferred to said ——— ——— company,
142 and said terminal company shall cause the party designated by said ——— ——— company to be elected a member of the board of directors of said terminal company.

"Sixth. In case of any disagreement between an applying company seeking joint ownership of the terminal properties and the

proprietary companies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the terminal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies, and when the disagreement shall have been finally settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the terminal properties and for the service rendered by the terminal company. Provided, however, that before an applying company can avail itself of the use of the properties of the terminal company pending litigation it shall furnish a bond with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District of Missouri or the judge of said court, conditioned that prompt payment will be made of all sums due for use of the properties and the service rendered by the terminal company pending the settlement of the dispute in court between the applying and the proprietary companies.

"In testimony whereof, the parties hereto have caused this agreement to be executed by their proper officers, in duplicate, as of the ——— day of ———, 19—.

"———— ————,
"———— ————."

143 It is also ordered that in case any existing or future railroad company desires to use but not to acquire the joint ownership of the properties of the Terminal Railroad Association an agreement in substantially the following form shall be entered into between said company and the Terminal Railroad Association of St. Louis, Missouri:

"Whereas the Terminal Railroad Association of St. Louis, Missouri, has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the cities of St. Louis, Missouri, East St. Louis, Madison, Granite City, and Venice, Illinois, adapted and used for handling and interchanging interstate commerce and traffic; and

"Whereas the ——— ——— company wishes to secure in proper form a right to use the said terminal properties now held or hereafter to be secured by the Terminal Railroad Association of St. Louis, Missouri,

"Therefore it is agreed between the parties as follows:

"That the said Terminal Railroad Association of St. Louis, Missouri, party of the first part, in consideration of the covenants and agreements herein contained to be kept and performed by the ——— ——— company, party of the second part, does hereby lease, devise, and let and grant to second party the right at all times to use for ——— years the terminal properties acquired in Missouri and Illinois in and adjacent to the cities of St. Louis, Missouri, East St. Louis, Madison, Granite City, and Venice, Illinois, and prop-

erties now or hereafter located in what is known now or may be known as the St. Louis Railway Gateway for Interstate Commerce,
as the said properties now are or may be hereafter located,
144 constructed, maintained, operated, or acquired for the interchange and handling of interstate commerce by railroad companies at and in the territory above named and the transportation of persons and property over and upon the said terminal property, including the right of said second party to use all real estate, stations, depots, warehouses, docks, ferries, right of way, single and double tracks, loading and team tracks, and bridges, and all facilities of every class and kind now owned, leased, or controlled or operated by the first party or that may hereafter be operated, controlled, or owned or leased by said first party for the purpose of transporting persons and property or for collecting and receiving freight upon the following conditions and terms, to wit:

"The said party of the first part grants the second party the use of all of its terminal properties and facilities and equal access thereto to the same extent and in the same manner and agrees hereby to perform the same service for the said second party as the said first party now or in the future may give to the present or future proprietary railroad companies in the transportation of persons and property and the interchange of interstate commerce between railroad carriers over the terminal properties of the party of the first part, it being the intention of this agreement to definitely accord to the party of the second part the use of the terminal facilities of the party of the first part so that in respect of use and character of service the said second party shall have the same kind and equal service with that given the present or future proprietary companies in the transportation over said terminal properties of persons and
property and the collection and distribution and handling of
145 freight and shall have equal and like use and service without discrimination of any kind of all facilities and properties now owned or hereafter owned, used, acquired, or operated by said first party in connection with its terminal business to the end that the said first party in handling the traffic of the second party and the traffic of the owning proprietary railroad companies, shall act as the impartial agent of said second party and the proprietary owning lines. And in consideration of the several previous undertakings and agreements herein contained to be kept and performed by said party of the first part the party of the second part hereby contracts and agrees to and with the said party of the first part:

"First. That the said second party or its successors or assigns will pay to the first party for the use of the properties of the first party and for the services rendered in transporting persons and property under this contract its proper proportion of the following items as set out in the contract known in the record in this case as agreement 'A' between the Terminal Railroad Association of St. Louis, Missouri, as first party and certain of the proprietary railroad com-

panies named therein as proprietary companies and executed October 1, 1889, to wit:

"1. Rental due to the bridge and tunnel companies under the lease heretofore described, as follows:

Interest on bridge bonds	$350,000
Dividend on bridge company first preferred stock	149,000
Dividend on bridge company second preferred stock	90,000
Dividend on tunnel railroad capital stock	75,000
To maintain corporate organization of bridge and tunnel companies	2,500

"2. Interest on all outstanding 4½ per cent bonds of the first party.

146 "3. Dividends on such bonds or preferred stock, not now contemplated, but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

"4. All taxes and assessments, premiums of insurance, rentals on leaseholds, and expenses of every kind incurred in the maintenance, operation, repair, and renewal of said terminal system and every part thereof.

"5. A sum of money, not exceeding two thousand dollars in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party, and of any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

"Provided, also, that the basis of said adjustment of the above items to be paid by ——— ——— company shall be as follows: That is to say, the ——— ——— company shall pay such proportion of said above-named items as its business carried on, over, and upon said terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the terminal company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

"The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the board of directors of the said Terminal Railroad Association of St.

147 Louis, Missouri: Provided, however, if the disagreement as to the proportion of use arises between a company applying to become a joint user and the proprietary companies it may be submitted to the District Court of the United States for the Eastern Division of the Eastern District of Missouri upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Second. In case of any disagreement between an applying company seeking use of the terminal properties and the proprietary companies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the terminal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies, and when the disagreement shall have been finally

settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the terminal properties and for the service rendered by the terminal company: Provided, however, that before an applying company can avail itself of the use of the properties of the terminal company pending litigation it shall furnish a bond, with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District of Missouri, or the judge of said court, conditioned that prompt payment will be made of all sums due for use of the properties and the service rendered by the terminal company pending the settlement of the dispute in court between the applying and proprietary companies.

"Provided that nothing herein shall be construed as compelling party of the second part to pay any part of the annual pay-
148 ment of one hundred thousand dollars ($100,000) as a sinking fund made by said terminal association under the covenant in the fifty million dollar ($50,000,000) mortgage dated December 16, 1902.

"In testimony whereof, the parties hereto have caused this agreement to be executed by their proper officers, in duplicate, as of the ——— day of ———, 19—.

"———— ————.
"———— ————."

Second. It is ordered by the court that there be stricken out of the contract, known as "Exhibit A," of October 1, 1889, between the Terminal Railroad Association of St. Louis, Missouri, and certain-named railroad companies, who are defendants herein, paragraph III, which reads as follows:

"In consideration of the foregoing, each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

It is ordered that wherever said paragraph III of said contract, or a substantially similar one, occurs in or is by a reference incorporated into the following-named contracts and agreements or any other contracts and agreements between defendants, or any of them, that it shall be, and is hereby, removed therefrom so that the said contracts and agreements shall contain no clause
149 unlawfully restricting and restraining interstate commerce to the facilities of the said terminal company:

Trust agreement made December 16, 1902—Exhibits P. 2658.

Guarantee agreement of December 16, 1902—Exhibits P. 1932.

Admission agreement of December 16, 1902, with Southern Railway Company, Illinois Central Railroad Company, The Chicago

and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and the Missouri, Kansas and Texas Railway Company—Exhibits P. 1593.

The agreement admitting the Chicago, Rock Island and Pacific Railway Company, executed December 16, 1902—Exhibits P. 3250.

Admission agreement of St. Louis and San Francisco Railroad Company of June 9, 1902—Exhibits P. 3249.

Admission agreement of St. Louis, Vandalia and Terre Haute Railroad Company, executed February 13, 1902—Exhibits P. 3241.

Third. It is ordered and adjudged that the defendants herein and all existing or future railroad companies who may become joint owners or joint users of the terminal properties of the defendants shall bill traffic as follows:

All traffic destined to St. Louis, Missouri, shall be billed direct to St. Louis, Missouri.

All traffic originating in St. Louis, Missouri, shall be billed direct to point of destination and shall not be billed to East St. Louis, Illinois, or other junction point and then rebilled to point of destination.

150 The defendants shall not bill to East St. Louis, Illinois, or any other junction point, traffic destined to St. Louis, Missouri, and then rebill said traffic to St. Louis, Missouri.

The defendants shall not bill to East St. Louis or other junction points traffic destined to pass through St. Louis, Missouri, to points beyond, or through the St. Louis railway gateway, and then rebill the said traffic.

Traffic destined to pass through St. Louis, Missouri, or through the St. Louis railway gateway to points beyond, in any direction, shall be billed through to final destination.

And under no circumstances shall traffic destined to St. Louis, Missouri, or points beyond be billed to East St. Louis, Illinois, or other junction point and rebilled to St. Louis, Missouri, or to points beyond, nor shall traffic originating in St. Louis be, under any circumstances, billed to East St. Louis, Illinois, or other junction point and then rebilled to the point of destination.

It is further ordered and decreed that the defendants and all existing and future railroad companies who shall became associated with defendants under the terms of this decree or otherwise be, and are hereby, enjoined forever from billing the traffic mentioned in this paragraph in any other manner than as ordered herein.

Fourth. It is ordered and decreed that the defendants herein and any existing or future railroad company acquiring a joint ownership in or a right to use the terminal properties now held or hereafter acquired by the defendants are hereby enjoined from and shall

151 not make a special or so-called arbitrary charge (commonly known as "the arbitrary") upon traffic destined to St. Louis, Missouri, or points beyond, or originating in St. Louis, Missouri, or passing through St. Louis, Missouri, or the St. Louis railway

gateway to points beyond for the use of and transportation over the terminal properties and facilities the defendants now own or may hereafter acquire, between the termini of the proprietary railroads of said terminal association in St. Louis, Missouri, East St. Louis, Granite City, Madison, Venice, and Brooklyn, Illinois, nor between the termini of the proprietary railroads of said terminal association in the territory of the St. Louis railway gateway in the States of Missouri and Illinois.

And it is ordered that in the transportation and handling of traffic by the defendants the cities and towns of St. Louis, Missouri, East St. Louis, Illinois, Madison, Granite City, Venice, and Brooklyn, Illinois, and the territory in the St. Louis railway gateway shall be treated by the defendants as to rates charged, service supplied, and facilities furnished as one common commercial and business centre, and the cities and towns above named herein and the territory of the St. Louis railway gateway shall be, as to traffic, treated as the St. Louis business district, and one and the same rate for transportation of persons and property shall be charged to and from each of the above-named cities and towns and to the territory designated as the St. Louis Railway gateway.

And it is ordered and adjudged that no different or greater rate be charged by defendants for traffic destined to St. Louis, Missouri, than is charged for similar traffic destined to East St. Louis, Madison, Venice, Granite City, or Brooklyn, Illinois, or any other point in the territory designated as the St. Louis railway gateway;
152 and that no greater or different rate be charged for traffic destined to East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, or any other point in the territory designated as the St. Louis railway gateway than is charged for similar traffic destined to St. Louis, Missouri; that no different rate be charged upon traffic originating in St. Louis, Missouri, than is charged for similar traffic originating in East St. Louis, Venice, Granite City, Madison, or Brooklyn, Illinois, or any other point in the territory known as the St. Louis railway gateway; that no different or greater rate be charged upon traffic originating in East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, than is charged upon traffic originating in St. Louis, Missouri, it being intended by this decree to prevent discrimination in the handling of interstate commerce by defendants either in favor of or against St. Louis, Missouri, East St. Louis, Madison, Granite City, Venice, and Brooklyn, Illinois, or any other point in the territory now or hereafter designated as the St. Louis railway gateway.

Delivery shall be made at any point upon the said terminal tracks in any of above-named cities or towns to which traffic may be billed. And defendants are hereby forever enjoined from handling traffic above mentioned except as herein indicated.

Fifth. It is further ordered that there shall be eliminated from the contract known as "Exhibit A," of October 1, 1889, the following language in paragraph V thereof, to wit:

"That such rates of toll or charges for the use of the bridge, depots, and other properties of said terminal system shall, subject to provision of article 13, be fixed from time to time by the first party as will produce a sum sufficient each year to pay the following, which sums."

153 And it is ordered that wherever said words above set out in paragraph V of said Exhibit A occur in or are by reference incorporated into the following named contracts and agreements between defendants, or any of them, it shall be, and is hereby, removed therefrom so that said contracts and agreements shall contain no clauses requiring the defendants to fix and collect rates of toll and charges upon traffic destined to St. Louis, Missouri, or East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, or any point in the territory now or hereafter known as the St. Louis railway gateway or originating in either of said cities or towns or in said territory or passing through said cities or towns or territory to points beyond for the use of the terminal facilities and properties of the defendants between the termini of the existing or future proprietary railroads in St. Louis, Missouri, East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, or any point in what is now or may be hereafter known as the territory of the St. Louis railway gateway:

Trust agreement made December 16, 1902—Exhibits P. 2658.

Guarantee agreement of December 16, 1902—Exhibits P. 1932.

Admission agreement of December 16, 1902, with Southern Railway Company, Illinois Central Railroad Company, The Chicago and Alton Railroad Company, Chicago, Burlington and Quincy Railway Company, and the Missouri, Kansas and Texas Railway Company—Exhibits P. 1593.

The agreement admitting the Chicago, Rock Island and Pacific Railway Company, executed December 16 1902—Exhibits P. 3250.

Admission agreement of St. Louis and San Francisco Railroad Company of June 9, 1902—Exhibits P. 3240.

Admission agreement of St. Louis, Vandalia and Terre
154 Haute Railroad Company, executed February 13, 1902—Exhibits P. 3241.

Provided, nothing herein shall be construed to prevent the said Terminal Railroad Association from making a proper switching charge for services performed after traffic has been finally delivered to the point of destination to which it was billed in either of the above-named cities or towns or at any point in the territory now or hereafter designated as the St. Louis railway gateway.

Sixth. It is further ordered and adjudged that any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said terminal properties and the owning proprietary companies shall be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed, and

the party so filing said petition shall at least fifteen (15) days before doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day at least fifteen (15) days after the service of said notice.

Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri and shall be heard when called in its regular order on said docket, and the proceedings shall be subject to review by appeal as in any other cases.

Seventh. It is further adjudged and decreed that nothing herein shall affect the power of the Interstate Commerce Commission
155 over rates charged by the said Terminal Railroad Association or the power of said commission to determine the mode of billing traffic over the line of said association or any other power legally conferred upon said commission.

(Endorsed:) Filed (motion) Dec. 6th, 1913. W. W. Nall, clerk.

156 *Order taking cause as submitted.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, a corporation, et al., defendants. } In Equity. No. 5250

Before their honors, Circuit Judges Sanborn, Hook, and Smith.

Now at this day comes the United States of America, appearing by Edward C. Crow, Esq., special assistant to the Attorney General, and by Charles A. Houts, Esq., United States attorney for the Eastern District of Missouri, and come also the said defendants, appearing by Messrs. H. S. Priest and T. M. Pierce, their solicitors; and now the said complainant files and presents to the court its motion for the entry of a final decree in this cause in the form attached to and accompanying said motion, and the said defendants present to the court their plan of reorganization, as filed herein on July 29th, 1913; which motion of complainant and which plan of reorganization of defendants, being now taken up, are argued by counsel for the respective parties and submitted to the court, with leave to defendants to file any objections to said proposed form of final decree, and any brief, within two weeks from this date, and with leave to complainant to reply thereto within one week thereafter.

The city of East St. Louis, Illinois, appearing by its corporation counsel, applies to the court for leave to file an intervening
157 petition in this cause; upon due consideration whereof the court doth order that said application be, and the same is

hereby, denied, but counsel for said petitioner is heard upon the form of a final decree to be entered herein.

WALTER H. SANBORN,
Presiding Judge.

DEC. 6TH, 1913.

(Endorsed:) Filed Dec. 6th, 1913. W. W. Nall, Clerk.

158 *Final decree, and opinion of Circuit Judge Smith.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL., DEFENDANTS.

This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the 22d day of April, 1912, ordered, adjudged, and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be, and the same is hereby, reversed, and that said cause is remanded to this court for further proceedings in accordance with the mandate of the
159 Supreme Court of the United States in this cause, bearing date the twenty-third day of May, 1912.

And afterwards, to wit, it appearing that on the 16th day of June, 1913, a preliminary decree was entered in accordance with the mandate of the Supreme Court, now, therefore, it is ordered, adjudged, and decreed by the court as follows:

1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the antitrust act of July 2, 1890 (26 Stat., 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business, such as supplying and operating facilities for the interchange of traffic between railroads, and to assist in the collecting and distributing of traffic for the carrier companies—switching, storage, and the like—and modifying its contracts as herein specified.

An election having been made to continue the combination for terminal purposes the defendants are therefore perpetually enjoined from in anywise managing or conducting the said Terminal Railroad Association or any of its constituent companies, and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered.

160 "The agreement of October 1, 1889, between the Terminal Railroad Association and various other defendants, known in the record as "Exhibit A," shall be reformed in the following manner:

(a) The provision thereof reading as follows shall be eliminated: "III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

(b) The provision thereof reading as follows shall be eliminated: "XVII. Neither party shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party."

In lieu thereof the following may be inserted: "No proprietary or using company shall sublet its rights and privileges in the use of the terminal facilities to any other company or companies."

(c) The provision thereof reading as follows shall be eliminated: "XIX. This agreement may be executed in counterparts, and any railroad company not named as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but

161 not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof, thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto."

In lieu thereof the following shall be inserted:

(1) In case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(2) Any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facili-

ties of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

(3) Any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said terminal properties and the owning proprietary companies shall be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed, and the party so filing said petition shall at
162 least fifteen (15) days before so doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day. Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri, and shall be heard when called in its regular order on said docket, and the proceedings shall be subject to review by appeal as in any other cases. Upon being advised by the filing of a petition of such dispute or controversy the court may at once admit the applying company to ownership or use of the terminal facilities during the pendency of the proceeding upon the giving of security in amount and form as it may direct.

(d) All provisions of the purport or effect of those eliminated from the agreement of October 1, 1889, shall also be removed from all other contracts affecting the ownership or use of the terminal facilities to which the Terminal Railroad Association and the proprietary companies or any of them are parties. The benefits and burdens of the amended agreement shall inure to and rest upon all future proprietary and using railroad companies respectively.

3. Hereafter traffic destined to St. Louis, Missouri, or to points west of the Mississippi River and to be transported through the St. Louis gateway or traffic from St. Louis, Missouri, destined to points east of said river, shall not be billed to East St. Louis, Illinois, or other junction points or termini of the railroads of any of the said railroad companies east of the river and then rebilled to destination, but for all such traffic each railroad company shall issue through bills of lading unless otherwise directed by the person controlling the same. The defendants are perpetually enjoined from violating the above provisions.

163 4. The defendants are perpetually enjoined from making any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

5. The provisions of this decree shall extend to and embrace all railroad companies now or hereafter admitted to joint ownership or

use of the facilities of the Terminal Railroad Association and to all its facilities present and future acquired.

6. Nothing in this decree shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such commission.

7. This cause is reserved for such further orders and decrees as may be deemed necessary.

WALTER H. SANBORN,
WILLIAM C. HOOK,
WALTER I. SMITH,
Circuit Judges.

ST. LOUIS, *January 29, 1914.*

Filed March 2, 1914. W. W. NALL, *Clerk.*

164 In the District Court of the United States in and for the Eastern Division of the Eastern District of Missouri.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., defendants.

SMITH, Circuit Judge.

The members of the court have entertained and now entertain divergent views as to what the decree in this case should be, notwithstanding the opinion of the Supreme Court, which is our guide and which all of us are cheerfully desirous of following according to its true intent.

The foregoing decree is in the nature of a compromise of these divergent views, and as such I have signed it, but I could not do this without expressing my personal opinion briefly upon the subject.

The fixing of rates for the future is a legislative and not a judicial function.

There are numerous roads which do not extend beyond the State of Illinois which terminate at East St. Louis. One of these
165 is only eight or ten miles long. It probably cost not to exceed three hundred thousand dollars for the entire road. It is now contended that the Supreme Court meant to hold that for whatever price this road saw fit to haul coal to East St. Louis or for whatever price might be fixed by Illinois it must haul it to St. Louis over property including bridges, right of way, and trackage worth many millions of dollars.

I can not reach that conclusion, and chiefly because such a decree would be beyond the jurisdiction of this or any other human court, even as a part of the jurisdiction of a court of equity to award complete relief. It is distinctly a legislative function, and until Con-

gress or the Interstate Commerce Commission shall so fix the rates no judicial tribunal has any power to so decree.

2. Not only has the Interstate Commerce Commission not so decreed, but it has long held that such an order should not be made. (Commercial Club of Omaha v. C., R. I. & P. Ry. Co., 6 Interstate Commerce Commission Rep., 647; see other cases cited in Pierce's Digest of Decisions under act to regulate commerce, 405–6–7.)

3. Wholly aside from both of these questions if this decree means the rate must be the same from points in Illinois to East St. Louis, Illinois, and to St. Louis, Missouri, then an intrastate and an interstate rate are indissolubly united, and the State of Illinois has thus power to fix interstate rates.

166 It has recently been held that before State rates can be declared unconstitutional the entire intrastate business must be taken into account.

For this reason the State of Illinois could put in a noncompensatory coal rate to East St. Louis if the rates as a whole were compensatory.

There is substantially no limit the State can not go to in reducing the rates on any given commodity provided the entire body of rates is compensatory.

It was held in the Minnesota Rate Cases, 230 U. S., 352, that the interstate commerce law did not divest the State of the power to make rates throughout its limits, and so, under no provision of the existing law, State or Federal, could the rate on coal from points in Illinois to East St. Louis be decreed invalid unless the entire schedule of rates was noncompensatory.

It is apparently the opinion of at least a part of the court that this decree without legislative action ties interstate rates onto State rates, so that while the United States, under existing laws, can not control State rates a State may control United States rates.

This is abhorrent to me, and I do not think is the true construction.

Assuming without admitting that a terminal company can not establish different switching rates for different zones, I submit that the various railroads independently of what they pay for switching may establish one rate to East St. Louis and another to St. Louis, and in the absence of some action by Congress or the Interstate Commerce Commission there is no power to interfere with their doing so under this decree or otherwise.

Except Congress or the Interstate Commerce Commission act there is no one authorized to so order.

167 Assuming again that the terminal company can not establish different switching rates for different zones, I am satisfied that, irrespective of what switching rates they have to pay, the railroads have the right to charge a higher rate into St. Louis on Illinois coal than they do to East St. Louis on the same coal.

Filed March 2, 1914.

W. W. NALL, *Clerk.*

168 (Petition for appeal, and order of appeal)

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, St. Louis Merchants' Bridge Terminal Railway Company, Wiggins Ferry Company, St. Louis Bridge Company, St. Louis Merchants Bridge Company, Missouri, Kansas & Texas Railway Company, St. Louis & San Francisco Railway Company, The Chicago & Alton Railway Company, Baltimore & Ohio Southwestern Railroad Company, Illinois Central Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago, Burlington & Quincy Railway Company, St. Louis, Vandalia & Terre Haute Railroad Company, The Wabash Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Louisville & Nashville Railroad Company, Southern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Missouri Pacific Railway Company, Central Trust Company of New York, A. A. Allen, S. N. Felton, A. J. Davidson, W. M. Green, J. T. Harahan, C. S. Clarke, H. Miller, Benjamin McKean, Joseph Ramsey, George E. Evans, C. F. Schaff, T. C. Powell, J. F. Stevens, A. G. Cochran, W. S. McChesney, Julius Walsh, V. W. Fisher, and S. D. Webster, defendants.

The above-named complainant conceiving itself aggrieved by the decree made and entered on the second day of March, 1914, in the above-entitled cause, does hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and it prays that this appeal may be allowed and that a transcript of the records, proceedings, and papers upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the
169 United States.

EDWARD C. CROW,
Special Assistant to the Attorney General.

———— ————,
Special Assistant to the Attorney General.

Dated at St. Louis, Missouri, March 27th, 1914.

The foregoing petition for appeal is granted and the claim of appeal therein made is allowed.

Done in open court this 27th day of March, 1914.

WALTER H. SANBORN,
Senior Circuit Judge.

(Endorsed:) Filed March 27th, 1914. W. W. Nall, Clerk.

170 *Assignment of errors.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, COMPLAINANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, St. Louis Merchants Bridge Terminal Railway Company, Wiggins Ferry Company, St. Louis Bridge Company, St. Louis Merchants' Bridge Company, Missouri, Kansas & Texas Railway Company, St. Louis & San Francisco Railway Company, The Chicago & Alton Railway Company, Baltimore & Ohio Southwestern Railroad Company, Illinois Central Railroad Company, St. Louis, Iron Mountain & Southern Railway Company, Chicago, Burlington & Quincy Railway Company, St. Louis, Vandalia & Terre Haute Railroad Company, The Wabash Railroad Company, Cleveland, Cincinnati, Chicago & St. Louis Railway Company, Louisville & Nashville Railroad Company, Southern Railway Company, The Chicago, Rock Island & Pacific Railway Company, The Missouri Pacific Railway Company, Central Trust Company of New York, A. A. Allen, S. M. Felton, A. J. Davidson, W. M. Green, J. T. Harahan, C. S. Clarke, H. Miller, Benjamin McKean, Joseph Ramsey, George E. Evans, C. E. Schaff, T. C. Powell, J. F. Stevens, A. G. Cochran, W. S. McChesney, Julius Walsh, V. W. Fisher, and S. D. Webster, defendants.

Now comes the complainant above named and files the following assignment of errors upon which it will rely in its appeal from the decree made by this honorable court on the second day of March, 1914, in the above-entitled cause, and says that there is manifest

171 error in the record of proceedings herein and in said final decree entered herein in the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri, and that the court erred therein in the following particulars, to wit:

I.

The complainant assigns as error the action of the court in denying the application and motion of the complainant to enter the interlocutory decree asked by the complainant.

II.

The complainant assigns as error the failure and refusal of the court upon the record in this cause to enter an interlocutory decree in accordance with the opinion of the Supreme Court directing the complainant and the defendants herein to submit to the court within ninety days after the receipt of the mandate of the Supreme Court herein a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Railroad Association of St. Louis, Missouri, which plan should eliminate the violation of law pointed out by the Supreme Court as being a combination made by defendants within the inhibition of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopoly."

III.

The complainant assigns as error the failure and refusal of the court upon the record in this case to enter a final decree in accordance with the opinion of the Supreme Court effectively prohibiting the continuance of the combination, conspiracy, and restraint of trade and commerce among the several States, as described in the complaint filed in this suit and found to exist by the Supreme Court, and which said combination the Supreme Court decided was in violation
172 of the act of Congress of July 2, 1890, to protect trade and commerce against restraint and monopoly.

IV.

The complainant assigns as error the failure and refusal of the court in denying the application and motion of the complainant to enter the final decree in the form as submitted and asked by the complainant.

V.

The complainant assigns as error the failure and refusal of the court to direct the defendants herein to act in connection with the complainant in submitting to the court within ninety days after the receipt of the mandate in this case a plan for the reorganization of the contract between the fourteen defendant railroad companies and the terminal company so that the organization of the defendants and the operation of their properties and the contracts between defendants would cease to be in violation of the inhibition of the act of Congress of July 2, 1890.

VI.

The complainant assigns as error the entry by the court of the final decree in this case as made and filed the second of March, 1914, in the office of the clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, because said final decree as entered is not in accordance with the opinion of the Supreme Court heretofore rendered in this cause and does not effectively carry out the mandate of the Supreme Court, so as to prevent the continuance by the defendants of the violation of the act of Congress against restraint of trade and monopoly of July 2, 1890.

VII.

The complainant assigns as error the failure of the court to
173 provide in its final decree the exact form and conditions of a contract, which should be executed between the defendants and a company or companies, asking either joint use or joint ownership of the terminal facilities controlled by the defendants.

VIII.

The complainant assigns as error the failure of the court to designate specifically in its final decree what contracts should have stricken out of them the portions thereof ordered eliminated by the opinion and mandate of the Supreme Court.

IX.

The complainant assigns as error the action of the court in placing in its final decree the precise words, without more, of the fifth paragraph of the Supreme Court's order relating to the arbitrary charge in respect of traffic originating within the one-hundred-mile area, because to merely put the precise words of the fifth paragraph in the decree, without more, does not end litigation but establishes a starting point for further controversy.

X.

The complainant assigns as error the action of the court in entering a final decree herein permitting the defendants to continue the existing organization of the terminal company and the combination for operation between the terminal company and the Wiggins Ferry Company and the Merchants' Company and the several companies related to these above-named corporations after the complainant and the defendants had failed to come to an agreement in substantial accord with the opinion and decree of the Supreme Court, because the order of the Supreme Court provided for a dissolution and not a continuance of the combination between said three above-named

corporations, the Wiggins, Terminal, and Merchants' Companies, upon the failure of the parties—complainant and defendants—
174 to come to an agreement in accordance with the opinion of the Supreme Court and its decree.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays that such disposition be made therewith as is in accordance with law and the statutes of the United States in such case made and provided, and complainant prays a reversal of said decretal order and decree made and entered by said court and a decree entered in accordance with the directions contained in the decree of reversal of this cause by the Supreme Court of the United States, and its opinion filed with the latter decree.

EDWARD C. CROW,
Special Assistant to the Attorney General.

(Endorsed:) Filed March 27, 1914. W. W. Nall, clerk.

175 *Election.*

In the District Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.

UNITED STATES OF AMERICA, APPELLANT,
vs.
TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS et al., appellees.

The above-named appellant hereby elects to have the clerk of the above-named court make out and file a transcript of the record in the above-entitled cause in the Supreme Court of the United States, and that said record be printed under the supervision of the clerk of said Supreme Court of the United States.

EDWARD C. CROW,
Special Assistant to the Attorney General.

(Endorsed:) Filed April 9th, 1914. W. W. Nall, Clerk.

176 UNITED STATES OF AMERICA,
Eastern Division of the Eastern Judicial District of Missouri, ss:

I, W. W. Nall, clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record and proceedings in the cause No. 5250, United States of America, complainant, versus Terminal Railroad Association of St. Louis et al., defendants (save as restricted by the praecipe for transcript hereinbefore set forth),

together with all things of and concerning the same, as fully as the same remain on file and of record in said cause in my office; and that the original citation is hereto attached and herewith returned.

In witness whereof, I hereunto set my hand and affix the seal of said district court, at office in the city of St. Louis, in the Eastern Division of the Eastern District of Missouri, this ninth day of April, A. D. 1914.

[SEAL.]

W. W. NALL,
Clerk of said District Court.

(Indorsement on cover:) File No. 24,174. E. Missouri D. C. U. S. Term No. 1023. The United States, appellant, *vs.* The Terminal Railroad Association of St. Louis et al. Filed April 18th, 1914. File No. 24,174.

In the Supreme Court of the United States.

OCTOBER TERM, 1913.

THE UNITED STATES OF AMERICA, APPELLANT,
v.
THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS ET AL. } No. 1023.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

MOTION TO ADVANCE.

The Solicitor General on behalf of the United States respectfully moves the court to advance the above-entitled cause for argument.

The suit is one in equity under the antitrust act of July 2, 1890. The principal defendants are The Terminal Railroad Association of St. Louis and its 14 proprietary railroads. The petition, filed November 25, 1905, charged that defendants, by effecting the unification of substantially every terminal facility in the city of St. Louis, Mo., had restrained and monopolized interstate commerce between the States of Missouri and Illinois and other States and foreign nations. An examiner was appointed, before whom

much testimony was taken during a period of several years. The Attorney General having filed a certificate pursuant to the expediting act of February 11, 1903, 32 Stat. 823, the case came on for hearing before the four circuit judges of the Eighth Circuit.

On May 21, 1909, the four judges entered an order stating that they found themselves equally divided in opinion, and, acting upon an erroneous construction of the expediting act, they thereupon certified the case to this court. At the October term, 1909, after the decision in *B. & O. R. R. Co.* v. *Interstate Commerce Commission*, 215 U. S. 216, a motion to dismiss was made by the United States upon the ground that no final judgment had been entered below. This motion was granted and the case remanded. (215 U. S. 595.)

On June 7, 1910, a final order was entered by the circuit judges dismissing the petition. From this order an appeal was taken to this court, where the case was heard at the October term, 1911. On April 22, 1912, this court handed down its decision reversing the order dismissing the petition and holding defendants to be parties to a combination in restraint of trade. The case was remanded to the District Court for the Eastern District of Missouri (the Judicial Code having become effective in the meantime) with directions as follows:

> These considerations lead to a reversal of the decree dismissing the bill. This is accordingly adjudged and the case is remanded to the District Court, with directions that a decree be

there entered directing the parties to submit to the court, within ninety days after receipt of mandate, a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company, which we have pointed out as bringing the combination within the inhibition of the statute.

First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character and cost of service, place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to the District Court, upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. To avoid any possible misapprehension, the decree should also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such Commission.

Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree, the court will, after hearing the parties upon a plan for the dissolution of the combination between the Terminal Company, The Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete dis-

> joinder of the three systems, and their future operation as independent systems, as may be necessary, enjoining the defendants, singly and collectively from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof. (224 U. S. 383, 411.)

The judge of the District Court having expressed his intention of entering a final decree which, according to the view of the Government, would not have complied with the mandate of this court, application was made to this court for a writ of prohibition, which was allowed on the ground that the district judge was without jurisdiction and that the decree could be entered only by the circuit judges sitting as a District Court. (*Ex parte United States*, 226 U. S. 420.) Thereafter, on April 30, 1913, an interlocutory decree was entered by the circuit judges, to which the United States duly excepted; and, on March 2, 1914, a final decree was entered from which the United States prosecutes this appeal.

It is the contention of the Government that the court below failed to carry out the opinion and mandate of this court in the following particulars, amongst others:

(*a*) In directing only the defendants and not all the parties, including the appellant, to submit to the

court a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company; in consequence of which there was no agreement between the parties in respect of any such plan.

(*b*) In not directing a dissolution of the combination when there was no agreement by the parties upon a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company.

(*c*) In not giving definite and specific directions for the complete elimination of the arbitrary charge made by defendants in respect of traffic originating within one hundred miles of St. Louis and in giving only a general direction which but establishes a basis for further controversy.

This case is of the utmost importance to the people of the city of St. Louis and to the commercial interests of a large section of the country, and, as heretofore shown, it has been in litigation for more than eight years. Furthermore, the case is one of those the expediting of which is provided for by said act of February 11, 1903.

Notice of this motion has been given opposing counsel.

JOHN W. DAVIS,
Solicitor General.

APRIL, 1914.

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United States v. *Terminal Railroad Association of St. Louis*, 224 U. S., 383.

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES OF AMERICA, Appellant,
v.
THE TERMINAL RAILROAD ASSOCIATION OF St. Louis et al. } No. 452.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This action was begun November 5, 1905, by petition, under the act of Congress commonly known as the "Sherman Antitrust Act," of July 2, 1890, against the defendant railroad companies and certain officers and directors thereof named in the petition, charging them with violating said act by monopolizing and unreasonably restraining interstate commerce between the States of Missouri and Illinois and other States and foreign countries.

The petition avers the facts in detail upon which the complainant relies, and charges a combination and a conspiracy in restraint of interstate and foreign trade in violation of the first section of the antitrust act.

The petition also charges an attempt to monopolize and a monopolization of interstate and foreign trade in violation of the second section of the act.

Answers were filed by the various companies, admitting a great many of the facts as to corporate organization and consolidation of interests, and stock ownership and transfer of property, and leases thereof, but denying that either the effect or the intent of the transactions was to restrain interstate commerce; and averring specifically that the combination and operation of the properties in question (in the manner substantially as alleged in the petition) was an aid to commerce and not a restraint, and that they were so combined and operated for the purpose of facilitating the transportation of persons and property by the fourteen railroads, codefendants of The Terminal Railroad Association, and all other railroads engaged in interstate commerce between Missouri and Illinois and centering at St. Louis, Mo.

The case was heard by the four circuit judges of the eighth circuit, who, being equally divided in opinion, entered a decree dismissing the bill. The United States appealed to this court, which reversed the decree of the circuit judges (*United*

States v. *St. Louis Terminal,* 224 U. S., 383), basing its decision upon the following findings of fact (224 U. S., 391–409):

> The principal defendant is the Terminal Railroad Association of St. Louis, hereinafter designated as the Terminal Company. It is a corporation of the State of Missouri, and was organized under an agreement made in 1889 between Mr. Jay Gould and a number of the defendant railroad companies for the express purpose of acquiring the properties of several independent terminal companies at St. Louis with a view to combining and operating them as a unitary system.
>
> The terminal properties first acquired and combined into one system by the Terminal Company comprised the following: The Union Railway & Transit Company of St. Louis and East St. Louis; The Terminal Railroad of St. Louis and East St. Louis; The Union Depot Company of St. Louis; The St. Louis Bridge Company, and the Tunnel Railroad of St. Louis. These properties included the great union station, the only existing railroad bridge—the Eads, or St. Louis Bridge—and every connecting or terminal company by means of which that bridge could be used by railroads terminating on either side of the river. For a time this combination was operated in competiton with the terminal system of the Wiggins Ferry Company, and upon the completion of the Merchants' Bridge, in competition

with it, and a system of terminals which were organized in connection with it. The Wiggins Ferry Company had for many years operated car transfer boats by means of which cars were transferred between St. Louis and East St. Louis.

Upon each side of the river it owned extensive railway terminal facilities, with which connection was maintained with the many railroads terminating on the west and east sides of the river, which gave such roads connection with each other, as well as access to many of the industrial and business districts on each side. In 1890 a third terminal system was opened up by the completion of a second railroad bridge over the Mississippi River at St. Louis, known as the Merchants' Bridge. This was a railroad toll bridge, open to every railroad upon equal terms. That it might forever maintain the potentiality of competition as a railroad bridge, the act of Congress authorizing its construction provided that no stockholder in any other railway bridge company should become a stockholder therein. But as this was a mere bridge company, it was essential that railroad companies desiring to use it should have railway connections with it on each side of the river. For this purpose two or more railway companies were organized and lines of railway were constructed connecting each end of the Merchants' Bridge with various railroad systems terminating on either side of the river. The Merchants' Bridge and its allied termi-

nals were thereby able to afford many, if not all, of the railroads coming into St. Louis access to the business districts on both sides of the river and connection with each other.

Thus, for a time, there existed three independent methods by which connection was maintained between railroads terminating on either side of the river at St. Louis: First, the original Wiggins Ferry Company and its railway terminal connections; second, The Eads Railroad Bridge and the several terminal companies by means of which railroads terminating at St. Louis were able to use that bridge and connect with one another, constituting the system controlled by the Terminal Company, and, third, the Merchants' Bridge and terminal facilities owned and operated by companies in connection therewith.

This resulted in some cases in an unnecessary duplication of facilities, but it at least gave to carriers and shippers some choice, a condition which, if it does not lead to competition in charges, does insure competition in service. Important as were the considerations mentioned, their independence of one another served to keep open the means for the entrance of new lines to the city, and was an obstacle to united opposition from existing lines. The importance of this will be more clearly seen when we come to consider the topographical conditions of the situation.

That the promoters of the Terminal Company designed to obtain the control of every

feasible means of railroad access to St. Louis, or means of connecting the lines of railway entering on opposite sides of the river, is manifested by the declarations of the original agreement, as well as by the successive steps which followed. Thus, the proviso in the act of Congress authorizing the construction of the Merchants' Bridge, which forbade the ownership of its stock by any other bridge company or stockholder in any such company, was eliminated by an act of Congress, and shortly thereafter the Terminal Company obtained stock control of the Merchants' Bridge Company, and of its related terminal companies, and likewise a lease.

The Wiggins Ferry Company owned the river front on the Illinois shore opposite St. Louis for a distance of several miles. It had on that side and on its own property switching yards and other terminal facilities. From these yards extended lines of rails which connected with its car transfer boats and with the termini of railroads on the Illinois side. On the St. Louis side of the river it had like facilities by which it was in connection with railway lines terminating on that side. That company was, consequently, able to interchange traffic between the systems on opposite sides of the river and to serve many industries. In 1892 the Rock Island Railroad Company endeavored to obtain an independent entrance to the city. For this purpose it sought to acquire the facilities owned by the Wiggins Ferry Company by

securing a control of its capital stock. This was not deemed desirable by the railroad companies which jointly owned the Terminal Company's facilities, and to prevent this acquisition effort was made to secure control of the stock. The competition was fierce and the market price of the shares pushed to an abnormal price. The final result being in doubt, an agreement was reached by which the Rock Island Company was admitted to joint ownership with the other proprietary companies in all of the terminal properties which were operated by the Terminal Company or which should be acquired by it. The shares in the Ferry Company bought by the Rock Island were transferred to the Terminal Company at cost and were paid for by that company. These shares, united with those which had been acquired by the Terminal Company, enabled the latter to absorb the properties of the Ferry Company, and thus the three independent terminal systems were combined into a single system.

We come, then, to the question upon which the case must turn: Has the unification of substantially every terminal facility by which the traffic of St. Louis is served resulted in a combination which is in restraint of trade within the meaning and purpose of the antitrust act?

It is not contended that the unification of the terminal facilities of a great city where many railroad systems center is, under all circumstances and conditions, a combination in restraint of trade or commerce. Whether

it is a facility in aid of interstate commerce or an unreasonable restraint forbidden by the act of Congress, as construed and applied by this court in the cases of *The Standard Oil Company* v. *The United States* 221 U. S., 1 and *The United States* v. *American Tobacco Company* 221 U. S., 106 will depend upon the intent to be inferred from the extent of the control thereby secured over instrumentalities which such commerce is under compulsion to use, the method by which such control has been brought about, and the manner in which that control has been exerted.

The consequence to interstate commerce of this combination can not be appreciated without a consideration of natural conditions greatly affecting the railroad situation at St. Louis. Though 24 lines of railway converge at St. Louis, not one of them passes through. About one-half of these lines have their termini on the Illinois side of the river. The others, coming from the west and north, have their termini either in the city or on its northern edge. To the river the city owes its origin, and for a century and more its river commerce was predominant. It is now the great obstacle to connections between the termini of lines on opposite sides of the river and any entry into the city by eastern lines. The cost of construction and maintenance of railroad bridges over so great a river makes it impracticable for every road desiring to enter or pass through the city to have its own

bridge. The obvious solution is the maintenance of toll bridges open to the use of any and all lines upon identical terms. And so the commercial interests of St. Louis sought to solve the question, the system of car ferry transfer being inadequate to the growing demands of an ever-increasing population. The first bridge, called the Eads bridge, was, and is, a toll bridge. Any carrier may use it on equal terms. But to use it there must be access over rails connecting the bridge and the railway. On the St. Louis side the bridge terminates at the foot of the great hills upon which the city is built; on the Illinois side it ends in the low and wide valley of the Mississippi. This condition resulted in the organization of independent companies which undertook to connect the bridge on each side with the various railroad termini. On the Missouri side it was necessary to tunnel the hills, that the valley of Mill Creek might be reached, where the roads from the west had their termini. Thus, though the bridge might be used by all upon equal terms, it was accessible only by means of the several terminal companies operating lines connecting it with the railroad termini.

This brought about a condition which led to the construction of the second bridge, the Merchants' Bridge. This, too, was, and is, a toll bridge, and may be used by all upon equal terms. To prevent its control by the Eads Bridge Company, it was carefully provided that no stockholder in any other

bridge company should own its shares. But this Merchants' Bridge, like the Eads Bridge, had no rail connections with any of the existing railroad systems, and these facilities as in the case of the Eads Bridge, were supplied by a number of independent railway companies who undertook to fill in the gaps between the bridge ends and the termini of railroads on both sides of the river. It must be also observed that these terminal companies were in many instances so supplied with switch connections as not only to connect with the bridge, but also served to connect such roads with each other and with the industries along their lines. Now, it is evident that these lines connecting railroad termini with the railroad bridges dominated the situation. They stood, as it were, just outside the gateway, and none could enter, though the gate stood open, who did not comply with their terms. The topographical situation making access to the city difficult does not end with the river. The city lies upon a group of great hills which hug the river closely and rapidly recede to the west. These hills are penetrated on the west by the narrow valley of Mill Creek, which crosses the city about its center. Railways coming from the west use this valley, but its facilities are very restricted and now quite occupied. North of the city the hills drop back from the river gradually, and there exists a valley formed by the Mississippi and Missouri Rivers. Railroads coming from the north on the west

side of the river come by this valley. As we have stated before, the valley of the Mississippi at St. Louis is on the Illinois side of the river. Railroads coming from the east, northeast, and southeast have their termini in that valley. As a consequence, there have grown up numerous cities and towns of some consequence as manufacturing places, the chief of which is East St. Louis.

The result of the geographical and topographical situation is that it is, as a practical matter, impossible for any railroad company to pass through, or even enter St. Louis, so as to be within reach of its industries or commerce, without using the facilities entirely controlled by the Terminal Company. The averment of the bill that the railroad companies, here defendants, being the sole stockholders of the Terminal Company, as we shall later see, compel all other railroad companies converging at St. Louis to use the facilities owned and operated by the Terminal Company, is, therefore, borne out by the facts of the situation. Nor is this effect denied, for the learned counsel representing the proprietary companies, as well as the Terminal Company, say in their filed brief: "There indeed is compulsion, but it is inherent in the situation. The other companies use the terminal properties because it is not possible to acquire adequate facilities for themselves. The cost to any one company is prohibitive." Obviously, this was not true before the consolidation of the systems of the Wiggins Ferry Company and the Merchants'

Bridge Company with the system theretofore controlled by the Terminal Company. That the non-proprietary companies might have been compelled to use the instrumentalities of one or the other of the three systems then available, and that the advantages secured might not have been so great as those offered by the unified system now operated by the Terminal Company, must be admitted. But that there existed before the three terminal systems were combined a considerable measure of competition for the business of the other companies, and a larger power of competition, is undeniable. That the fourteen proprietary companies did not then have the power they now have to exclude either existing roads not in the combination, or new companies, from acquiring an independent entrance into the city, is also indisputable. The independent existence of these three terminal systems was, therefore, a menace to complete domination as keeping open the way for greater competition. Only by their absorption or some equivalent arrangement was it possible to exclude from independent entrance the Rock Island Company, or any other company which might desire its own terminals. To close the door to competition large sums were expended to acquire stock control. For this purpose the obligations of the absorbed companies were assumed and new funds obtained by mortgages upon the unified system.

The physical conditions which compel the use of the combined system by every road

which desires to cross the river, either to serve the commerce of the city or to connect with lines separated by the river, is the factor which gives greatest color to the unlawfulness of the combination as now controlled and operated. If the Terminal Company was in law and fact the agent of all, the mere unification which has occurred would take on quite a different aspect. It becomes, therefore, of the utmost importance to know the character and purpose of the corporation which has combined all of the terminal instrumentalities upon which the commerce of a great city and gateway between the East and West must depend. The fact that the Terminal Company is not an independent corporation at all is of the utmost significance. There are twenty-four railroads converging at St. Louis. The relation of the Terminal Company is not one of impartiality to each of them. It was organized in 1889, at the instance of six of these railroad companies, for the purpose of acquiring all existing terminal instrumentalities for the benefit of the combination, and such other companies as they might thereafter admit to joint ownership by unanimous consent, and upon a consideration to be agreed upon. From time to time other companies came to an agreement with the original proprietors until, at the time this bill was filed, the properties unified were held for the joint use of the fourteen companies made defendants. In the contract of 1889, above referred to, the purpose of acquiring the first terminals

combined is declared to be " that said properties may be held in perpetuity as a unit and developed and improved in the interest of the proprietary companies, for the purpose of furnishing adequate terminal facilities in St. Louis and East St. Louis." This purpose was carried out by the conveyance to " each of the proprietary companies * * * forever a right of joint use with each other and such other companies as may be admitted as proprietary lines to joint use thereof, of all said terminal properties * * * now held or that may be hereafter acquired in St. Louis and East St. Louis, * * * it being understood that the right herein granted to each proprietary company is not transferable to any extent whatever, but is to remain as an appurtenant to the railroad now owned by each proprietary company."

That these facilities were not to be acquired for the benefit of any railroad company which might desire a joint use thereof was made plain by a provision in the contract referred to which stipulated that other railroad companies not named therein as proprietary companies might only be admitted " to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement," etc. Inasmuch as the directors of the Terminal Company consisted of one representative of each of the proprietary companies,

selected by itself, it is plain that each of said companies had and still has a veto upon any joint use or control of terminals by any non-proprietary company.

By that and the supplemental agreement of December, 1902, the Ferry Company and the Merchants' Bridge Company having then been absorbed, the proprietary companies prescribe that the charges of the company shall be so adjusted as to produce no more revenue than shall equal the fixed charges, operating and maintenance expenses. Deficiencies for those purposes the proprietary companies guarantee to make good, though such payments are to be reimbursed by an increase in charges, if necessary.

We fail to find in either of the contracts referred to any provision abrogating the requirement of unanimous consent to the admission of other companies to the ownership of the Terminal Company, though counsel say that no such company will now find itself excluded from joint use or ownership upon application. That other companies are permitted to use the facilities of the Terminal Company upon paying the same charges paid by the proprietary companies seems to be conceded. But there is no provision by which any such privilege is accorded.

By still another clause in the agreement the proprietary companies obligate themselves to forever use the facilities of the Terminal Company for all business destined to

cross the river. This would seem to guarantee against any competitive system, since the companies to the agreement now control about one-third of the railroad mileage of the United States.

In acquiring these properties the Terminal Company has assumed mortgage and stock dividend obligations of the constituent companies aggregating about twenty-five million dollars. It has executed its own mortgage upon all of its property to secure an issue of fifty million dollars of bonds, of which twenty million dollars worth have been sold, and the proceeds used in construction or in paying for the properties acquired. It has thus about forty-five million dollars of mortgage or fixed charges or liabilities. The company has an authorized capital stock of fifty million dollars. Of this about twenty-eight million dollars has been issued in equal proportions to the several owning railroad companies. No dividends have ever been paid, and the company disclaims any purpose to pay dividends. We fail to find any obligation by which they may be prevented from paying dividends upon the stock held by the proprietary companies, or that in its treasury, if ever issued. Undoubtedly, the major part of this revenue arises from the business done by the proprietary companies through the Terminal Company, but that coming from other companies is, however, a large contribution. That no direct profit is derived by the owning companies from the operation of the ter-

minals may be true. But it is not clear that the proprietary companies do not make an indirect profit through ownership of obligations of the absorbed companies.

That through their ownership and exclusive control they are in possession of advantages in respect to the enormous traffic which must use the St. Louis gateway, is undeniable. That the proprietary companies have not availed themselves of the full measure of their power to impede free competition of outside companies, may be true. Aside from their power under all of the conditions to exclude independent entrance to the city by any outside company, their control has resulted in certain methods which are not consistent with freedom of competition. * * *

* * * * *

There are certain practices of this Terminal Company which operate to the disadvantage of the commerce which must cross the river at St. Louis, and of nonproprietary railroad lines compelled to use its facilities. One of them grows out of the fact that the Terminal Company is a terminal company and something more. It does not confine itself to supplying and operating mere facilities for the interchange of traffic between railroads and to assistance in the collecting and distributing of traffic for the carrier companies. It, as well as several of the absorbed terminal companies, were organized under ordinary railroad charters. If the combination which has occurred is to escape condem-

nation as a combination of parallel and competing railroad companies, it is because of the essential difference between railroad and terminal companies proper—differences pointed out by the Missouri Supreme Court in the case heretofore referred to. Indeed, the defense to this proceeding is based upon the insistence that the Terminal Company is solely engaged in operating terminal facilities, defined in the briefs, "as mechanical devices for the exchange, receipt, and distribution of traffic." This Terminal Company, in addition to its schedule for terminal charges proper, such as switching, warehousing, etc., files its rate sheets for the transportation of every class of merchandise from the termini of the railroads on the Illinois side of the river to destinations across the river over its lines. These rates are applied to all traffic destined to cross the river, with certain exceptions to which we shall later refer, which originates within an irregular area of which St. Louis is the center, and having a diameter of from one to two hundred miles. This arbitrary operates to cast a burden upon short hauls, which has led to much complaint, as being both discriminatory and extortionate. An exception is made as to traffic originating within so much of this area as constitutes what is called "Green Line Territory," or which is destined to points within "Green Line Territory." This seems to be based upon competitive conditions caused by the great toll railway bridge at Memphis, Tenn.,

the bridge toll being treated by lines using the bridge as a part of the through rate.

Another exception to the rule imposing this arbitrary is that it does not apply to traffic which originates in East St. Louis, whether it is destined to cross the river or not. The reason for this exemption, where such traffic does cross the river, is not apparent. Possibly, it may be said that it is because the traffic of St. Louis and East St. Louis should be treated as arising in the same commercial area. But this reason does not seem to apply to the traffic originating in St. Louis, which is bound east, though that of East St. Louis is altogether free from this arbitrary charge. The effect of this arbitrary discrimination is obviously injurious to the commerce and manufacturers of St. Louis, and is among the chief causes of complaint against the Terminal Company. Mr. Perkins, to whom we have before referred as a capable and impartial expert, says of the consequence of this curious exception out of the one hundred mile area rule, that "the effect of these charges was, of course, to put the man doing business in St. Louis at a disadvantage to that extent with the man doing business at East St. Louis on his eastern business." Again, he says that the practical operation was to give East St. Louis a distinct advantage in the manufacturing lines. Another practice which marks this Terminal Company as a transportation company which interposed itself between railroads having their termini on opposite sides of the river,

> and between the city itself and the roads terminating on the east side of the river, is that all traffic destined to cross the river at St. Louis, whether bound east or west, or destined for the city if coming from the east, is billed only to East St. Louis, and there rebilled to destination.
>
> The practice of rebilling and of making a distinct hauling charge is an evident survival of the methods which existed when the eastern lines had no termini in St. Louis. They then billed to East St. Louis and there turned the traffic over to one of the existing terminal companies, who made their own specific charges for the haul to places of delivery within the city. The practice has been continued after the reason for it has disappeared. The effect of this practice of rebilling at East St. Louis and of imposing this arbitrary upon traffic originating within 100 miles of the city, destined to cross the river, seems to have been also applied to the large coal traffic between the Illinois coal mines, upon which the city is largely dependent.

This court held that the property in Illinois and Missouri of the Terminal Railroad Association was *terminal* property of the fourteen proprietary railroads. It said:

> If the combination which has occurred is to escape condemnation as a *combination of parallel* and *competing railroads* it is because of the essential *difference between railroad and terminal companies proper.*

(Italics my own.) (*United States* v. *Terminal Association et al.*, 224 U. S., loc. cit. p. 407.

This court held that the St. Louis Terminal Association *is a terminal company only* and not an independent railroad carrier. It held that the *termini of the eastern proprietary railroads are not in Illinois but in St. Louis, Mo.* It held that as the Terminal Railroad Association is owned by the fourteen proprietary roads and the property of said association constitutes the terminals in Missouri and Illinois of the proprietary lines, therefore, the defendants can not make the arbitrary charge fixed by the Terminal Association's schedule of rates for the haul from the point of connection of the proprietary lines in Illinois to St. Louis, Mo., upon traffic destined to or originating within the irregular zone of 100 to 200 miles arbitrarily fixed by the defendants.

That this charge for the haul from the point of connection of the eastern proprietary lines in Illinois with the Terminal Association property to St. Louis, Mo., is but an arbitrarily fixed charge is clearly proven by defendant's rate sheets on file, which show that on a carload of coal hauled by defendants a distance of 10 miles from the mines to the point of connection in Illinois with the Terminal Association property above mentioned and on a carload of coal hauled by defendants a distance of 125 miles to said above mentioned point of

connection, the charge for the haul from the Illinois point of connection to St. Louis, Mo., as fixed by the schedule of the Terminal Association, is the same in each case.

This court held that the combination of railroads as evidenced by the ownership of the stock of and control of the Terminal Railroad Association, was a monopoly of the instruments of interstate commerce, giving defendants power to exclude independent entrance to the city by other roads; and also that this monopolistic control had brought about certain methods of conducting commerce which, as the court remarked, " are not consistent with freedom of competition." (*United States* v. *Terminal Association*, 224 U. S., loc. cit. p. 401.

The court found that the fourteen proprietary roads owned the Terminal Company and therefore the court says the eastern lines terminate not in Illinois but in St. Louis, Mo.

This being so, the court held that the rails and river bridges and ferries extending across the Mississippi from East St. Louis, Granite City, Madison, and Venice, Ill., are a part of the fourteen proprietary roads, and *are the terminal properties of said fourteen roads,* and being such, the defendants through the instrumentality of the *Terminal Railroad Association can not make a separate and independent charge for the haul of freight and passengers from the above-named cities and towns in Illinois to St. Louis, Mo., nor can the defendant fix an arbitrary* zone based on distance from St.

Louis, Mo. (as they have done), and within the prescribed zone by means of a tariff schedule, fixed by the Terminal Association, *make an arbitrary* charge for the haul of traffic between East St. Louis, Madison, Granite City, Ill., and St. Louis, Mo., which is not made upon similar traffic outside the arbitrarily designated zone.

Speaking of this combination of railroads and its effect the court further said (224 U. S., 410):

> Some of its abuses are shown by the imposition of *the arbitrary* hauling charge imposed upon the *artificially limited trade districts described.* It is shown also by the maintenance of the system of billing traffic destined to cross the river at St. Louis, either east or west, or to St. Louis, if from points on the east side of the river, a practice so galling and universal as to practically "eliminate St. Louis from the railroad map," to quote the graphic, if extravagant, language of counsel for the United States, as respects the great traffic subject to the regulations.

Again (224 U. S., 401, 402, 404):

> We are not unmindful of the essential difference between terminal systems properly so described and railroad transportation companies. *The first* are but *instrumentalities which assist* the latter in the transfer of traffic between different lines, and in the collection and *distribution of traffic.*
>
> * * * * *

> Counsel assume that the combined terminals have come under a "common control or ownership." But this is not the case. That the instrumentalities so combined are not jointly owned or managed by all of the companies compelled to use them is a significant fact, which must be taken into account for the purpose of determining whether there has been a violation of the Antitrust Act. The control and ownership is that of the fourteen roads which are defendants. The railroad systems and the coal roads converging at St. Louis which are not associated with the proprietary companies are under compulsion to use the terminal system, and yet have no voice in its control.

Further, in speaking of the testimony of the only witness placed upon the stand by the defendants, Mr. Perkins, a railroad man of experience, and a railroad expert of the Municipal Bridge and Terminal Board, a commission appointed under a city ordinance headed by the mayor to study and report legislation needed to relieve the terminal conditions to St. Louis, this court said (224 U. S., 405, 406):

> The witness, however, points out that such a terminal company should be the agent of every company and, furthermore, that its service should not be for profit or gain. In short, that every railroad using the service should be a joint owner and equally interested in the control and management. This he thinks will serve the greatest possible economy and will give the most efficient service without discrimination. When thus

> jointly owned and controlled, whether through the medium of a mere holding or operating company, such as the Terminal Company is, or by other means, the facilities would belong to each relatively to its own business *and delivery would be made by each company* over its own tracks to connecting lines or places of *destination in the city.* The charge *for the haul thus lengthened* would *then be* properly absorbed by the through rate, *leaving nothing to be added to that to be charged the shipper or consignee but switching and storage charges proper.*
>
> The terminal properties in question are not so controlled and managed in view of the inherent local conditions as to escape condemnation as a restraint upon commerce. They are not under a common control and ownership. Nor can this be brought about unless the prohibition against the admission of other companies to such control is stricken out and provision made for the admission of any company to an equal control and management upon an equal basis with the present proprietary companies.

The court then takes up the practices of the Terminal Company which it says are the result of this combination and are illegal, and refers to the arbitrary zone—an irregular area of which St. Louis is the center—on traffic originating within which the defendant railroads through the Terminal Company impose an arbitrary charge not imposed on traffic outside of such area, and to the practice of rebilling at East St. Louis goods destined to St. Louis

and making a distinct hauling charge by the defendant Terminal Company, which practice is also condemned as illegal.

These extracts from the opinion of the court show that it held the combination of the railroads was a *monopoly* of the instruments of interstate commerce, giving defendants *power to exclude independent entrance by other roads to the city;* and also that the monopolistic control resulting from this *combination had brought about certain methods which, as the court says* (224 U. S., 401), "*are not consistent with freedom of competition.*"

The combination which the court referred to was formed by the organization of the Terminal Railroad Association and the transfer of its stock to fourteen proprietary roads and the subsequent contracts which have been hereinbefore referred to, prohibiting any other road from becoming a member except by *unanimous* consent, and requiring the proprietary lines to use the facilities of the combination, to wit, the property of the Terminal Railroad Association, for all traffic destined to pass through the St. Louis railway gateway.

The methods referred to as not being consistent with freedom of competition and as being illegal are: First, the practice of the defendants, through the Terminal Company, of imposing in addition to its schedule for terminal charges proper, such as switching, warehousing, etc., a charge fixed by the rate sheet of the Terminal Railroad Association for the transportation from the termini of the railroads

on the Illinois side of the river of every class of traffic originating within the irregular area of which St. Louis is the center, having a diameter of 100 to 200 miles and destined to St. Louis, Mo., which practice, the court says, " operates to cast a burden upon short hauls, which has led to much complaint as being both discriminatory and extortionate." Second, the practice of rebilling at East St. Louis and making a distinct hauling charge and imposing this arbitrary charge for the haul from the Illinois side of the Mississippi River upon traffic originating within 100 miles of St. Louis, Mo., and destined to St. Louis, Mo.

In order to correct these abuses the Supreme Court made the following specific order for the entry of a decree (224 U. S., 411–413):

> These considerations lead to a reversal of the decree dismissing the bill. This is accordingly adjudged and the case is remanded to the district court, with directions that a decree be there entered directing the parties to submit to the court, within ninety days after receipt of mandate, a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company, which we have pointed out as bringing the combination within the inhibition of the statute.
>
> First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company

upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character and cost of service, place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called hundred-mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user, as herein pro-

vided for and the terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to the district court, upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. To avoid any possible misapprehension, the decree should also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its line, or any other power conferred by law upon such commission.

Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree, the court will, after hearing the parties upon a plan for the dissolution of the combination between the Terminal Company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems, and their future operation as independent systems, as may be necessary, enjoining the defendants, singly and collectively, from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, pur-

chase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

The following is the language of the charge in the bill of complaint, to wit:

That by reason of the facts hereinbefore set out, said fourteen railroad companies above named, through their agent and representative (The Terminal Railroad Association of St. Louis), all use the property of said Terminal Railroad Association for interstate business between Illinois and Missouri, and compel all other railroad companies which are now owners of stock in said Terminal Association to use the said property of the Terminal Association for interstate commerce between Illinois and Missouri and between said two States and the other States of the United States and foreign countries, and that said fourteen railroads acting through the Terminal Association as aforesaid jointly and arbitrarily fix unreasonable charges and tolls to be paid for freight and passengers to be hauled and transferred in the interstate business between Illinois and Missouri and between said States and the several States of the United States and foreign countries, and by means of said joint control by the said fourteen railroad companies all competition is stifled and destroyed.

As to this charge, the Supreme Court in its opinion (loc. cit. 224 U. S., 397; vol. 56, L. Ed.) said:

> The averment of the bill that the railroad companies, here defendants, being the sole stockholders of the Terminal Company, as we shall later see, compel all other railroad companies converging at St. Louis to use the facilities owned and operated by the Terminal Company is, therefore, borne out by the facts of the situation.

Again this court said (224 U. S., 409; 56 L. Ed., loc. cit., 819):

> But the illegal restraint upon commerce among the States which we here find to exist consists in the possession acquired by the proprietary companies through the means and with the object we have stated, of dominating commerce among the States, carried on by other railroads entering or seeking to enter the city of St. Louis, and by which such railroads *are compelled* either to desist from *carrying on* interstate commerce or *to do so* upon the *terms imposed* by the proprietary companies. This control and possession constitute such a grip upon the commerce of St. Louis and commerce which must cross the river there, whether coming from the east or west, *as to be both an illegal restraint and an attempt to monopolize.*

This language of the bill and the comment of the court thereon conclusively show that the court found that the defendants had formed *an illegal*

combination in violation of the Sherman Act, and that said combination destroyed *competition in commerce* at St. Louis, Mo. The court found that the effect of the combination of roads and the manner of operating same was an unreasonable and unlawful restraint upon interstate commerce.

On the 23d day of May, 1912, this court issued its mandate, which was filed and entered of record on the 3d day of June, 1912.

On June 3, 1912, the United States filed in the District Court a motion for a decree and a proposed form of interlocutory decree. These are set forth in the Record (pp. 15–17; 17–20).

A controversy arose as to whether the district judge or the circuit judges, sitting as a District Court, should enter the interlocutory and final decrees. This was settled by a prohibition proceeding in the Supreme Court, decided January 6, 1913. (*Ex Parte United States*, 226 U. S., 420.)

On April 30, 1913, an interlocutory decree was entered by order of Circuit Judges Sanborn and Smith. Judge Hook refused to concur therein and filed an opinion setting forth his view as to what the interlocutory decree should be. Judge Sanborn also filed an opinion giving the reasons for the interlocutory decree as determined by himself and Judge Smith. The interlocutory decree and the two opinions are set forth in the Record (pp. 57–59; 60–67).

On June 25, 1913, complainant was given leave to file exceptions to the interlocutory decree, and

on July 8, 1913, filed the following exceptions (Rec., 68):

> Comes now the complainant herein and excepts to the interlocutory decree entered herein for the following reasons:
>
> First. Because the opinion of the Supreme Court required the parties to the litigation, the complainant and the defendants, to submit a plan for the reorganization of the contracts and agreements and the use and operation of the terminal facilities of the defendants, while the interlocutory decree only requires the defendants to agree among themselves upon such a plan.
>
> Second. Because the Supreme Court decided that upon the record the complainant was entitled to be relieved of the discriminatory "arbitrary" charge imposed upon St. Louis, Mo., traffic, and as this is a matter of public concern and a continuing violation of the law, the complainant is entitled to relief by injunction pending the entry of a final decree.
>
> The imposition of this arbitrary charge being a matter of public and not private concern, and being found to be illegal by the Supreme Court, its abolition and continued prevention should not be left to a contract to be agreed upon wholly by the defendants, and the protection of the public against the continuance of the imposition of the wrongful charge should not be and was not intended by the Supreme Court to be left to rest completely in an agreement of the de-

fendants not to continue the wrong. The interlocutory degree should, by injunction, prevent and enforce the continued prevention of the wrongful imposition of the "arbitrary" charge upon interstate St. Louis, Mo., traffic.

And because the interlocutory decree fails to enjoin the imposition now or to provide in the future for an injunction against the imposition of the illegal "arbitrary" charge on St. Louis, Mo., commerce, complainant excepts to the same.

Third. The Supreme Court found the practice of billing traffic destined to St. Louis, Mo., to East St. Louis, Ill., and rebilling the same to St. Louis, Mo., illegal and directed its discontinuance, and as this is a matter of public concern and the decree is intended to prevent a continued violation of the law in this respect, the interlocutory decree should have enjoined the practice of billing referred to above and should not have left it to be remedied only by a contract between the defendants; and, therefore, the complainant for this reason also excepts to the interlocutory decree.

Fourth. The Supreme Court found the clause of the agreement between the defendants requiring unanimous consent to the admission of other companies to the Terminal Railroad Association was illegal. This being so, the interlocutory decree should direct that this clause be removed from all agreements between the defendants. As the in-

terlocutory decree does not require the elimination of this clause for unanimous consent for admission of other companies, complainant excepts to the said interlocutory decree.

Fifth. The complainant further excepts to the interlocutory decree because the opinion of the Supreme Court clearly shows it intended the interlocutory and final decrees should by specific direction protect the interstate commerce of St. Louis, Mo., against discrimination by the defendants and prevent the defendants from continuing the monopoly of interstate commerce at St. Louis, Mo., as found to exist and pointed out by the Supreme Court; and the interlocutory decree fails to specifically carry out the above direction of the Supreme Court.

Sixth. Complainant further excepts to paragraph 5 in the interlocutory decree because it is merely a recital of the order of the Supreme Court and does not define and point out in what manner the defendants should conduct interstate traffic so as to abolish the " arbitrary " charge as to traffic originating within the so-called 100-mile zone, and there is not set out a clear, definite, and effective method of handling the traffic by the defendants so as to eliminate the violation of law found to exist by the imposition of the " arbitrary " charge.

On July 29, 1913, defendants filed a plan of reorganization, a reorganization agreement between Terminal Railroad Association and proprietary

lines, and a proposed form of final decree, all three of which are set forth in the record in the order named (pp. 69, 71, 77).

On December 6, 1913, the complainant filed a motion for entry of a final decree and a form of proposed final decree, which are set forth in the record (pp. 78–89).

On January 29, 1914, the three circuit judges united in entering a final decree, and at the same time Judge Smith filed an opinion in which he stated that the final decree as entered was in the nature of a compromise. The decree and opinion appear in the record at pages 90–93, 93–94.

Afterwards, on March 27, 1914, petition for appeal on behalf of complainant was filed and appeal granted, and on the same day the following assignment of errors was filed (Rec., 97–99):

I.

> The complainant assigns as error the action of the court in denying the application and motion of the complainant to enter the interlocutory decree asked by the complainant.

II.

> The complainant assigns as error the failure and refusal of the court upon the record in this cause to enter an interlocutory decree in accordance with the opinion of the Supreme Court directing the complainant and the defendants herein to submit to the court within ninety days after the receipt of the mandate

of the Supreme Court herein a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Railroad Association of St. Louis, Mo., which plan should eliminate the violation of law pointed out by the Supreme Court as being a combination made by defendants within the inhibition of the act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraint and monopoly."

III.

The complainant assigns as error the failure and refusal of the court upon the record in this case to enter a final decree in accordance with the opinion of the Supreme Court effectively prohibiting the continuance of the combination, conspiracy, and restraint of trade and commerce among the several States, as described in the complaint filed in this suit and found to exist by the Supreme Court, and which said combination the Supreme Court decided was in violation of the act of Congress of July 2, 1890, to protect trade and commerce against restraint and monopoly.

IV.

The complainant assigns as error the failure and refusal of the court in denying the application and motion of the complainant to enter the final decree in the form as submitted and asked by the complainant.

V.

The complainant assigns as error the failure and refusal of the court to direct the defendants herein to act in connection with the complainant in submitting to the court within ninety days after the receipt of the mandate in this case a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company so that the organization of the defendants and the operation of their properties and the contracts between defendants would cease to be in violation of the inhibition of the act of Congress of July 2, 1890.

VI.

The complainant assigns as error the entry by the court of the final decree in this case as made and filed the second of March, 1914, in the office of the clerk of the District Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, because said final decree as entered is not in accordance with the opinion of the Supreme Court heretofore rendered in this cause and does not effectively carry out the mandate of the Supreme Court, so as to prevent the continuance by the defendants of the violation of the act of Congress against restraint of trade and monopoly of July 2, 1890.

VII.

The complainant assigns as error the failure of the court to provide in its final decree

the exact form and conditions of a contract, which should be executed between the defendants and a company or companies, asking either joint use or joint ownership of the terminal facilities controlled by the defendants.

VIII.

The complainant assigns as error the failure of the court to designate specifically in its final decree what contracts should have stricken out of them the portions thereof ordered eliminated by the opinion and mandate of the Supreme Court.

IX.

The complainant assigns as error the action of the court in placing in its final decree the precise words, without more, of the fifth paragraph of the Supreme Court's order relating to the arbitrary charge in respect of traffic originating within the 100-mile area, because to merely put the precise words of the fifth paragraph in the decree, without more, does not end litigation but establishes a starting point for further controversy.

X.

The complainant assigns as error the action of the court in entering a final decree herein permitting the defendants to continue the existing organization of the Terminal Company and the combination for operation between the Terminal Company

and the Wiggins Ferry Company and the Merchants' Company and the several companies related to these above-named corporations after the complainant and the defendants had failed to come to an agreement in substantial accord with the opinion and decree of the Supreme Court, because the order of the Supreme Court provided for a dissolution and not a continuance of the combination between said three above-named corporations, the Wiggins, Terminal, and Merchants' Companies, upon the failure of the parties—complainant and defendants—to come to an agreement in accordance with the opinion of the Supreme Court and its decree.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays that such disposition be made therewith as is in accordance with law and the statutes of the United States in such case made and provided, and complainant prays a reversal of said decretal order and decree made and entered by said court and a decree entered in accordance with the directions contained in the decree of reversal of this cause by the Supreme Court of the United States, and its opinion filed with the latter decree.

On March 28, 1914, the defendants filed a motion to modify the decree, which was denied on June 20, 1914. On the same day the defendants appealed from the order denying the motion to modify the decree.

The appeal of the complainant taken on March 27, 1914, was advanced by this court for hearing on October 13, 1914.

BRIEF OF ARGUMENT.

I.

Combination between the three companies—The Terminal Company, Merchants' Company, and Wiggins Company—Government is entitled under order of this court to have dissolved, and such dissolution is hereby asked for.

The order of this court on this point was as follows (224 U. S., 411, 412):

> * * * The case is remanded to the District Court, with directions that a decree be there entered directing the parties to submit to the court, within 90 days after receipt of mandate, a plan for the reorganization of the contract between the 14 defendant railroad companies and the Terminal Company, which we have pointed out as bringing the combination within the inhibition of the statute.
>
> * * * * *
>
> Upon failure of the parties to come to an agreement which is in substantial accord with this opinion and decree, the court will, after hearing the parties upon a plan for the dissolution of the combination between the Terminal Company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the

> complete disjoinder of the three systems, and their future operation as independent systems, as may be necessary, enjoining the defendants, singly and collectively from any exercise of control or dominion over either of the said terminal systems, or their related constituent companies, through lease, purchase or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof.

Taking the position that the portion of the decree relating to the parties agreeing referred only to the parties defendant and did not refer to all the parties to the litigation, the defendants refused to attempt to agree and did not agree with the representatives of the Government upon a plan for the reorganization of the Terminal Company and its future operation. In other words, defendants said that they had the right to reorganize according to their own ideas without consulting the Government, and that if the Government did not like the reorganization it could go into court and object to it.

We submit this was a clear violation of and a refusal to comply with the order of this court heretofore recited directing the parties to agree upon a plan of reorganization. Complainant therefore insists that upon this refusal, and the failure, necessarily consequent upon such refusal, to agree upon a plan for reorganization of the terminal proper-

ties, the combination between the three companies should be dissolved, first, of course, giving the parties to the litigation an opportunity to be heard upon a plan for the disjoinder and future independent operations of the Terminal Company and the Merchants' Company and the Wiggins Ferry Company.

II.

Reformation in Contracts as Provided for by the Decree is Inadequate.

The final decree as entered below (Rec., 90–93) does not give force and vitality to the opinion of this court, and does not enforce the provisions of the antitrust act after this court has found that the act is being violated and has given specific direction as to how future violations of the act shall be prevented.

The final decree as entered below first found the Terminal Railroad Association an unlawful combination contrary to the antitrust act of July 2, 1890, so long as it and the Bridge and Ferry and Terminal Companies composing it are operated as transportation companies, but that the combination may continue as a unified terminal facility, confining itself wholly to terminal business, such as supplying and operating facilities for interchange of traffic between railroads and assisting in collecting and distributing traffic for carrier companies, and performing switching and storage service.

The decree next enjoins the Terminal and constitutent companies from operating their owned or

controlled properties otherwise than as *terminal facilities* for carriers using the same, and from making charges *otherwise than as and for terminal services.*

The third portion of the decree enjoins the defendants from issuing other than through bills of lading upon commerce destined to or originating in St. Louis, Mo., and enjoins them from billing traffic from or destined to or through St. Louis, Mo., to East St. Louis, Ill., or other junction point, and then rebilling it to destination.

The decree orders stricken from the agreement of October 1, 1889, the provision found objectionable by this court, binding each proprietary company forever to use the terminal properties for all traffic. But the same clause is found in seven other contracts and agreements and instruments of writing executed between defendants, namely: Trust agreement of December 16, 1902 (exhibits, record, original case in this court, p. 2658); guaranty agreement of December 16, 1902 (exhibits, record, original case, p. 1932); admission agreement of Southern Railway Company, Illionis Central Railroad Company, Chicago & Alton Railroad Company, Chicago, Burlington & Quincy Railroad Company, and Missouri, Kansas & Texas Railway Company (exhibits, original record, p. 1593); agreement admitting Chicago, Rock Island & Pacific Railway Company (exhibits, original record, p. 3250); admission agreement of St. Louis & San Francisco

Railroad Company (exhibits, original record, p. 3249); admission agreement of Vandalia Railroad (exhibits, original record, p. 3241).

The decree undertakes by a general provision to order eliminated from all other contracts the objectionable clause above noted. The decree also removes from the contracts clause 17 of the agreement of October 1, 1889, to the effect that admission can only be secured by unanimous consent.

In lieu of clause 17 the decree provides as follows:

> No proprietary or using company shall sublet its rights and privileges in the use of the terminal facilities to any other company or companies.

The decree then provides for joint use by roads not wishing to become joint owners as follows:

> (1) In case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.
>
> (2) Any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal

> facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

The decree then provides for submission to the United States District Court of disputes between companies applying for joint ownership or use and for use of facilities pending litigation, in practically the same manner as is provided in the decree proposed by the complainant.

In place of the foregoing provision as to the reformation of the contracts the complainant submits the following portion of the decree which it asked the court below to enter (Rec., 78–89):

> That there shall be removed from the agreement known as "Exhibit A" in the record in this case, and executed October 1, 1889, between the Terminal Railroad Association of St. Louis as first party and the various named defendants herein as second party, Clause XVII thereof reading as follows:
>
> "Neither party shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party."

And also Clause XIX, reading as follows:

"This agreement may be executed in counterparts, and any railroad company not named as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof, thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto."

And in lieu of Paragraph XIX thereof an agreement in substantially the following form shall be made between the Terminal Railroad Association of St. Louis, Mo., party of the first part, and any existing or future railroad company wishing to become a joint owner of the terminal properties in Missouri and Illinois and now held and operated or hereafter held and operated by the said Terminal Railroad Association:

"Whereas the Terminal Railroad Association of St. Louis, Mo., has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the cities of St. Louis, Mo., East St. Louis, Madison, Granite City, and Venice, Ill., adapted and used for handling and interchanging interstate commerce and traffic; and

" Whereas the ——— company wishes to secure, in proper form and in perpetuity, a joint ownership in and a right to use said terminal properties now held, or hereafter to be acquired, by the Terminal Railroad Association of St. Louis, Mo.,

" Therefore it is agreed for a valuable consideration between the parties as follows:

" First. That the Terminal Railroad Association of St. Louis, Mo., does hereby agree to cause to be transferred and delivered (to) ——— —— shares of the capital stock of said Terminal Association, said —— shares being the proportion of such stock now held severally by each of the railroad companies owning the stock of the Terminal Railroad Association under the contract heretofore made with said association and said above-named proprietary owning railroad companies, and said Terminal Railroad Association does hereby admit said ——— company to the joint ownership and use with the present proprietary companies of all the above-named terminal facilities of the said Terminal Railroad Association of St. Louis, in like manner and to like extent with each and all of the said owning proprietary companies, it being the intent of this agreement that a joint and common ownership and joint use of the above-named properties shall be had by the present proprietary owning railroad companies and ——— company, to the end and in order that the said Terminal Railroad Association of St. Louis, Mo., shall act

as the impartial agent of the present proprietary owning railroad companies and ——— company.

" Second. In consideration of said transfer and delivery of said stock, and admission to membership as a proprietary line of said Terminal Company, the said ——— company accepts the right of joint ownership and use herein granted by said Terminal Company, and hereby covenants and agrees to pay its proper proportion of the following items as set out in the contract, known as agreement 'A' between the Terminal Railroad Association of St. Louis, Mo., as first party, and certain of the proprietary railroad companies named therein as proprietary companies, and executed October 1, 1889, to wit:

" 1. Rental due to the bridge and tunnel companies under the lease heretofore described, as follows:

Interest on bridge bonds	$350,000
Dividend on bridge company first preferred stock	149,000
Dividend on bridge company second preferred stock	90,000
Dividend on tunnel railroad capital stock	75,000
To maintain corporate organization of bridge and tunnel companies	2,500

" 2. Interest on all outstanding 4½ per cent bonds of the first party.

" 3. Dividends on such bonds or preferred stock, not now contemplated, but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

"4. All taxes and assessments, premiums of insurance, rentals on leaseholds, and expenses of every kind incurred in the maintenance, operation, repair, and renewal of said terminal system and every part thereof.

"5. A sum of money, not exceeding $2,000 in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party, and of any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

"Provided also that the basis of said adjustment of the above items to be paid by ——— company shall be as follows: that is to say, the ——— company shall pay such proportion of said above-named items as its business carried on, over, and upon said terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the Terminal Company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

"The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the board of directors of the said Terminal Railroad Association of St. Louis, Mo.: Provided, however, if the disagreement as to the proportion of use arises

between a company applying to become a joint owner and the proprietary companies it may be submitted to the district court of the United States for the eastern division of the Eastern District of Missouri upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Third. It is hereby declared to be the intention of the parties hereto, that said ——— company as consideration for and upon acceptance of said stock and the execution of this agreement shall and hereby does become a party to the said agreement 'A,' hereinbefore mentioned with like force and effect as if it had been executed October 1, 1889, the date upon which said agreement was executed by the then parties thereto, save and except that the said ——— company intends to and does hereby only become a party to the agreement of October 1, 1889, known as 'Exhibit A,' as modified and changed by the opinion of the Supreme Court of the United States herein, and it is intended to and does bind neither of said parties hereto except in so far as it is in accord and harmony with each and every part of said opinion and in compliance therewith.

"Fourth. The stock of said Terminal Company to be issued as herein contemplated shall in form and conditions of issue correspond in all respects with the certificates of stock heretofore severally issued to said proprietary companies.

" Fifth. Upon the execution and delivery hereof or so soon thereafter as can be conveniently done, two (2) shares of stock shall be transferred to such person as said ——— company may designate as a director of said Terminal Company to represent the interests therein of said ——— company and for the purpose only of qualifying such person as a director; and the remaining shares of stock to be issued to said ——— company as herein contemplated shall be transferred to said ——— company, and said Terminal Company shall cause the party designated by said ——— company to be elected a member of the board of directors of said Terminal Company.

" Sixth. In case of any disagreement between an applying company seeking joint ownership of the terminal properties and the proprietary companies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the terminal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies, and when the disagreement shall have been finally settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the terminal properties and for the service rendered by the Terminal Company. Provided, however, that before an applying company can avail itself of the use of the properties

of the Terminal Company pending litigation it shall furnish a bond with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District of Missouri or the judge of said court, conditioned that prompt payment will be made of all sums due for use of the properties and the service rendered by the Terminal Company pending the settlement of the dispute in court between the applying and the proprietary companies.

" In testimony whereof, the parties hereto have caused this agreement to be executed by their proper officers, in duplicate, as of the —— day of ———, 19—.

" _____

" _____ "

It is also ordered that in case any existing or future railroad company desires to use but not to acquire the joint ownership of the properties of the Terminal Railroad Association an agreement in substantially the following form shall be entered into between said company and the Terminal Railroad Association of St. Louis, Mo.:

" Whereas the Terminal Railroad Association of St. Louis, Mo., has secured and now owns and operates terminal facilities on either side of the Mississippi River and in and adjacent to the cities of St. Louis, Mo., East St. Louis, Madison, Granite City, and Venice, Ill., adapted and used for handling and interchanging interstate commerce and traffic; and

"Whereas the ——— company wishes to secure in proper form a right to use the said terminal properties now held or hereafter to be secured by the Terminal Railroad Association of St. Louis, Mo.,

"Therefore it is agreed between the parties as follows:

"That the said Terminal Railroad Association of St. Louis, Mo., party of the first part, in consideration of the covenants and agreements herein contained to be kept and performed by the ——— company, party of the second part, does hereby lease, devise, and let and grant to second party the right at all times to use for —— years the terminal properties acquired in Missouri and Illinois in and adjacent to the cities of St. Louis, Mo., East St. Louis, Madison, Granite City, and Venice, Ill., and properties now or hereafter located in what is known now or may be known as the St. Louis Railway Gateway for Interstate Commerce, as the said properties now are or may be hereafter located, constructed, maintained, operated, or acquired for the interchange and handling of interstate commerce by railroad companies at and in the territory above named and the transportation of persons and property over and upon the said terminal property, including the right of said second party to use all real estate, stations, depots, warehouses, docks, ferries, right of way, single and double tracks, loading and team tracks, and bridges, and all facilities of every class and kind now owned, leased, or controlled or op-

erated by the first party or that may hereafter be operated, controlled, or owned or leased by said first party for the purpose of transporting persons and property or for collecting and receiving freight upon the following conditions and terms, to wit:

"The said party of the first part grants the second party the use of all of its terminal properties and facilities and equal access thereto to the same extent and in the same manner and agrees hereby to perform the same service for the said second party as the said first party now or in the future may give to the present or future proprietary railroad companies in the transportation of persons and property and the interchange of interstate commerce between railroad carriers over the terminal properties of the party of the first part, it being the intention of this agreement to definitely accord to the party of the second part the use of the terminal facilities of the party of the first part so that in respect of use and character of service the said second party shall have the same kind and equal service with that given the present or future proprietary companies in the transportation over said terminal properties of persons and property and the collection and distribution and handling of freight and shall have equal and like use and service without discrimination of any kind of all facilities and properties now owned or hereafter owned, used, acquired, or operated by said first party in connection with its terminal business to the end that the

said first party in handling the traffic of the second party and the traffic of the owning proprietary railroad companies, shall act as the impartial agent of said second party and the proprietary owning lines. And in consideration of the several previous undertakings and agreements herein contained to be kept and performed by said party of the first part the party of the second part hereby contracts and agrees to and with the said party of the first part:

" First. That the said second party or its successors or assigns will pay to the first party for the use of the properties of the first party and for the services rendered in transporting persons and property under this contract its proper proportion of the following items as set out in the contract known in the record in this case as agreement 'A' between the Terminal Railroad Association of St. Louis, Mo., as first party, and certain of the proprietary railroad companies named therein as proprietary companies and executed October 1, 1889, to wit:

" 1. Rental due to the bridge and tunnel companies under the lease heretofore described, as follows:

Interest on bridge bonds	$350,000
Dividend on bridge company first preferred stock	149,000
Dividend on bridge company second preferred stock	90,000
Dividend on tunnel railroad capital stock	75,000
To maintain corporate organization of bridge and tunnel companies	2,500

" 2. Interest on all outstanding 4½ per cent bonds of the first party.

" 3. Dividends on such bonds or preferred stock not now contemplated, but that may

become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

" 4. All taxes and assessments, premiums of insurance, rentals on leaseholds, and expenses of every kind incurred in the maintenance, operation, repair, and renewal of said terminal system and every part thereof.

" 5. A sum of money, not exceeding $2,000 in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party, and of any other company or companies whose creation and organization may become necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

" Provided, also, that the basis of said adjustment of the above items to be paid by ——— company shall be as follows: That is to say, the ——— company shall pay such proportion of said above-named items as its business carried on, over, and upon said terminal properties shall bear to the whole of the business carried on by the proprietary companies upon and over the properties of the Terminal Company after such rentals or receipts as are derived from other than railroad operation and use have been deducted therefrom.

" The determination and adjustment of the relative proportion of use by the various railroad companies and the settlement of all controversies among them relative to such use shall vest in the board of directors of the

said Terminal Railroad Association of St. Louis, Mo.: Provided, however, if the disagreement as to the proportion of use arises between a company applying to become a joint user and the proprietary companies it may be submitted to the District Court of the United States for the Eastern Division of the Eastern District of Missouri upon a petition filed in this cause, subject to review by appeal in the usual manner.

"Second. In case of any disagreement between an applying company seeking use of the terminal properties and the proprietary companies pending any hearing in the courts of said disagreement the applying company shall be accorded by the proprietary companies the same right to use the terminal properties of defendants herein, and the same service shall be rendered it as is rendered the proprietary companies, and when the disagreement shall have been finally settled in court the payment shall be made for such use and service pending the litigation upon the basis finally fixed by the court of future payments for use of the terminal properties and for the service rendered by the Terminal Company: Provided, however, that before an applying company can avail itself of the use of the properties of the Terminal Company pending litigation it shall furnish a bond, with sureties to be approved by the District Court of the United States for the Eastern Division of the Eastern District of Missouri, or the judge of said court, conditioned that prompt payment will be

made of all sums due for use of the properties and the service rendered by the Terminal Company pending the settlement of the dispute in court between the applying and proprietary companies.

" Provided that nothing herein shall be construed as compelling party of the second part to pay any part of the annual payment of one hundred thousand dollars ($100,000) as a sinking fund made by said Terminal Association under the covenant in the fifty million dollar ($50,000,000) mortgage dated December 16, 1902.

" In testimony whereof, the parties hereto have caused this agreement to be executed by their proper officers, in duplicate, as of the —— day of ———, 19—.

" _____

" _____ "

Second. It is ordered by the court that there be stricken out of the contract, known as " Exhibit A," of October 1, 1889, between the Terminal Railroad Association of St. Louis, Mo., and certain named railroad companies who are defendants herein, Paragraph III, which reads as follows:

" In consideration of the foregoing, each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to, and from St. Louis and destined to cross the Mississippi

River at St. Louis, and pay therefor as herein provided."

It is ordered that wherever said Paragraph III of said contract or a substantially similar one, occurs in or is by a reference incorporated into the following-named contracts and agreements, or any other contracts and agreements between defendants, or any of them, that it shall be, and is hereby, removed therefrom so that the said contracts and agreements shall contain no clause unlawfully restricting and restraining interstate commerce to the facilities of the said Terminal Company:

Trust agreement made December 16, 1902—Exhibits, p. 2658.

Guarantee agreement of December 16, 1902—Exhibits, p. 1932.

Admission agreement of December 16, 1902, with Southern Railway Company, Illinois Central Railroad Company, The Chicago & Alton Railroad Company, Chicago, Burlington & Quincy Railway Company, and the Missouri, Kansas & Texas Railway Company—Exhibits, p. 1593.

The agreement admitting the Chicago, Rock Island & Pacific Railway Company executed December 16, 1902—Exhibits, p. 3250.

Admission agreement of St. Louis & San Francisco Railroad Company of June 9, 1902—Exhibits, p. 3249.

Admission agreement of St. Louis, Vandalia & Terre Haute Railroad Company executed February 13, 1902—Exhibits, p. 3241.

The first requirement of this court was that the parties (not defendants) submit to the court a plan for the reorganization of the contract between the fourteen proprietary roads and the Terminal Company which should provide for the admission of any existing or future railroad companies to joint ownership and control of the combined terminal properties upon such terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies. The original agreement of October 1, 1889, required the unanimous consent of all of the parties to the agreement before any new company could be admitted.

The decree proposed by the complainant eliminates clauses 17 and 19 of said original agreement, which contains the objectionable parts as to unanimous consent and provides a detailed, workable form of a contract whereby any existing or future railroad may acquire a joint ownership and control of the combined terminal properties.

The order of this court was to cover existing and future railroads. It was not to be confined to the present. The rights of the parties were to be clearly defined.

The provisions in the proposed agreement for transfer of stock to the new company and the obligations it shall assume are definitely set out. The payments to be made are on the basis of the obligations already assumed by the proprietary compa-

nies and no existing contract rights are disturbed. A provision is inserted providing a basis for adjusting the amount to be paid under the obligations assumed by the new company, based upon the proportionate use of the properties; the determination of the proportionate use is primarily vested in the board of directors of the Terminal Railroad Association and controversies relative to the use of the properties are vested in the said board. And then follows a provision that if a disagreement arises relative to the proportion of use between an applying company and the proprietary lines, it may be submitted to the District Court for the Eastern Division of the Eastern District of Missouri, upon a petition filed, and the action of the court reviewed in the usual manner.

And then follows a general provision that by reference adopts all of the remaining provisions of the agreement of October 1, 1889, and explicitly states the new company becomes a party to the agreement of October 1, 1889, as changed and modified by the opinion of this court.

We therefore have, first, accorded by definite contract, the form of which is provided, a specific right to any existing or future railroad company to acquire a right to the joint ownership and control of the combined terminal properties; second, a definite entry into and acceptance by the new company of the contract of October 1, 1889, as modified by this court, and a definite assumption

by the new company of all the benefits and burdens of the present proprietary companies under said contract, so modified, of October 1, 1889.

This plan of reorganizing the contract between the proprietary companies and the Terminal Company leaves nothing in doubt as to what are the terms and conditions on which the new company enters and the obligations it assumes and the benefits it shall receive; and it provides definitely a specific procedure in case resort to court must be made.

Then follows a clause which is necessary to have inserted in the contract to give the public the benefits of the service and facilities afforded by the new company pending any litigation in the courts growing out of disagreements between the applying company and the proprietary companies. This provision simply authorizes the use of the properties pending such litigation, but protects the proprietary companies by requiring the applying company to give a bond conditioned for the payment of any amounts accruing pending the litigation.

The next order of this court was that " such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad company not electing to become a joint owner upon such terms in respect of use, character and cost of service as will place every such company upon as nearly an equal plane as that occupied by the proprietary companies."

The form of the agreement proposed specifically states that the using company is given the same rights and privileges of use of the properties and will be given the same service as the present or future proprietary roads are given; and then binds the Terminal Company to act as the impartial agent of the applying company and the proprietary lines. It definitely provides for the use of the terminal facilities of the Terminal Railroad by the applying company.

The burdens and payments to be made by the using company are just the same as those imposed upon a company applying for joint ownership. The provision for adjustment of difficulties through the court is the same as for an owning company. Also the provision for use of the properties pending any litigation is the same as is provided for a company applying for joint ownership.

There is one obligation from which the proposed contract excepts the using company from which a proprietary company is not excepted, and that is the obligation of the proprietary companies to contribute a sum annually to the sinking fund under the terms of the covenant in the $50,000,000 mortgage dated December 16, 1902.

This exception is made because a using road is a tenant and not an owner.

The second subdivision of the decree orders stricken out of the contract known as "Exhibit A," of October 1, 1889, and out of certain other named contracts and agreements, the clause which com-

pelled owning or using roads to use the Terminal Company's property for all traffic through, to, and from St. Louis, Mo., and destined to cross the river at St. Louis, Mo.

The contracts and agreements in which the objectionable clause occurs are named, while the decree is couched in general terms and does not name the contracts. There is no disagreement of counsel as to the fact that the clause should be removed, but the complainant desires a specific order directing removal of the objectionable clause from the contracts and agreements wherever it occurs. This mode of procedure leaves no room for doubt as to what was ordered by the court.

If it be objected that no standardized form should be provided for contracts with future companies seeking joint ownership or joint use, we submit that the form of agreement proposed simply amends the agreement of October 1, 1889, by eliminating the features thereof declared illegal and then securing definitely the right of any company to use or joint ownership and definitely settling the terms upon which the right to such use or joint ownership may be acquired and by incorporating generally all of the provisions of the contract of October 1, 1889, not held illegal by the court, *so that the form of contract as proposed by the Government is the contract the defendants themselves made October 1, 1889*, with the parts declared illegal eliminated, and with the addition of the specification of

the definite right to use or acquire joint ownership on terms distinctly set out.

Now, in the contract of October 1, 1889, made by the defendants, they themselves provided distinctly upon what terms and conditions a new company could be admitted, and nothing was left open to be settled as each new company applied for membership. If it was proper for the defendants to provide by the agreement of October 1, 1889, the form and character and condition of a contract future companies seeking membership should execute, why is it not proper for a court in a decree wherein it is sought to avoid discrimination and give access to all roads upon equal terms to provide a specified form of contract which all should use?

Equality as to right of use and ownership is sought to be obtained by the order of this court; and to obtain this equality all roads must be admitted upon the same terms and be subject to the same burdens and receive the same benefits; and we submit no way can be as certainly devised whereby such equality can be readily obtained as by the specific decree of the court. The defendants themselves standardized the contracts to be executed in the future by providing in clause 10 of the contract of October 1, 1889, as follows:

> This agreement may be executed in counterparts, and any railroad not named as second party hereto may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of

> the first party and on payment of such a consideration as they may determine and upon signing this agreement or any counterpart thereof, thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto.

This clause of the agreement fixed a contract for all future companies seeking membership. The proposed decree simply fixes a form of contract for companies seeking use or joint ownership.

III.

Discrimination by Arbitrary Charge as a Railroad Carrier by Defendants.

The next clause of the decree, No. 4, deals with the effect on St. Louis commerce of the operation by defendants of the terminal properties, bridges, train tracks, and allied companies as a *railroad carrier*, and not merely as a terminal company, and the purpose of the order of this court evidently was to remove what the court, in language heretofore quoted (supra pp. 17–20), pointed out as the effect of the operation of the terminal properties as a *railroad* and not merely as a *terminal facility*.

The decree as entered by the court below merely uses the precise words of the opinion of this court relating to the arbitrary charge. To do that and stop does not end litigation, but establishes a starting point for further controversy.

The complainant proposed the following provision to prevent discrimination against St. Louis commerce arising from the arbitrary charge and the use of the monopolistic power exercised whenever the terminal properties are used as a *railroad carrier* and *not as a terminal company only* (Rec., 86–87):

> It is ordered and decreed that the defendants herein and any existing or future railroad company acquiring a joint ownership in or a right to use the terminal properties now held or hereafter acquired by the defendants are hereby enjoined from and shall not make a special or so-called arbitrary charge (commonly known as "the arbitrary") upon traffic destined to St. Louis, Mo., or points beyond, or originating in St. Louis, Mo., or passing through St. Louis, Mo., or the St. Louis Railway Gateway to points beyond for the use of and transportation over the terminal properties and facilities the defendants now own or may hereafter acquire, between the termini of the proprietary railroads of said Terminal Association in St. Louis, Mo., East St. Louis, Granite City, Madison, Venice, and Brooklyn, Ill., nor between the termini of the proprietary railroads of said Terminal Association in the territory of the St. Louis Railway Gateway in the States of Missouri and Illinois.
>
> And it is ordered that in the transportation and handling of traffic by the defendants the cities and towns of St. Louis, Mo.; East St. Louis, Ill.; Madison, Granite City,

Venice, and Brooklyn, Ill.; and the territory in the St. Louis Railway Gateway shall be treated by the defendants, as to rates charged, service supplied, and facilities furnished, as one common commercial and business center, and the cities and towns above named herein and the territory of the St. Louis Railway Gateway shall be, as to traffic, treated as the St. Louis business district, and one and the same rate for transportation of persons and property shall be charged to and from each of the above-named cities and towns and to the territory designated as the St. Louis Railway Gateway.

And it is ordered and adjudged that no different or greater rate be charged by defendants for traffic destined to St. Louis, Mo., than is charged for similar traffic destined to East St. Louis, Madison, Venice, Granite City, or Brooklyn, Ill., or any other point in the territory designated as the St. Louis Railway Gateway; and that no greater or different rate be charged for traffic destined to East St. Louis, Madison, Granite City, Venice, or Brooklyn, Ill., or any other point in the territory designated as the St. Louis Gateway, than is charged for similar traffic destined to St. Louis, Mo.; that no different rate be charged upon traffic originating in St. Louis, Mo., than is charged for similar traffic originating in East St. Louis, Venice, Granite City, Madison, or Brooklyn, Ill., or any other point in the territory known as the St. Louis Railway Gateway; that no different or greater rate be charged upon

traffic originating in East St. Louis, Madison, Granite City, Venice, or Brooklyn, Ill., than is charged upon traffic originating in St. Louis, Mo.; it being intended by this decree to prevent discrimination in the handling of interstate commerce by defendants either in favor of or against St. Louis, Mo., East St. Louis, Madison, Granite City, Venice, and Brooklyn, Ill., or any other point in the territory now or hereafter designated as the St. Louis Railway Gateway.

Delivery shall be made at any point upon the said terminal tracks in any of abovenamed cities or towns to which traffic may be billed. And defendants are hereby forever enjoined from handling traffic abovementioned except as herein indicated.

Now, if the Terminal Railroad Company must act only as a *terminal company* and not as a *transportation company* engaged in operating a line of railway between the opposite banks of the Mississippi River at St. Louis, Mo., then it necessarily follows that the only legal charge the Terminal Company can make upon traffic originating in or destined to or passing through St. Louis, Mo., is a switching charge or other proper charge for *terminal service* only. And this switching charge, or other proper teminal charge, can not *be made until after a final delivery by the carrier is made in accordance with the bill of lading.* And the counsel for the defendants admit that the traffic from St. Louis, Mo., or to St. Louis, Mo., must be billed from or to St. Louis, Mo., as the case may be; and, therefore, it

follows that no charge in addition to the through freight rate can be made by the Terminal Company as a transportation company for the haul from or to the point of connection of the proprietary lines with the tracks of the Terminal Company. This court decided that the tracks and bridges and ferries and facilities of the Terminal Railroad Company were *the terminal* facilities of the proprietary roads *and nothing more;* that the eastern *roads* terminated *in St. Louis, Mo.;* and, therefore, whether the tracks, bridges, and facilities were situated in Missouri or Illinois, when used in transporting traffic destined to or originating in St. Louis, Mo., and billed from or to St. Louis, Mo., that no independent charge could be made by the Terminal Company for the use of its tracks, bridges, ferries, and facilities in handling said traffic so originating in or destined to and billed to or from St. Louis, Mo.; that the Terminal Company could not as a railroad company make an independent charge for its service.

Upon this point this court expressed itself emphatically in language hereinabove quoted (supra, pp. 17–20).

This court, in the portion of its opinion above referred to, clearly sets out the fact that while the defendants are making the defense that the Terminal Company is *solely* engaged in operating *terminal facilities,* it *does not confine itself to merely operating terminal facilities but in addition makes its*

charge for the transportation of every class of merchandise between the proprietary lines on either side of the river. The court says this constitutes the Terminal Company a regular railroad carrier and will bring it within the condemnation of the antitrust act as a combination of parallel and competing railroads under the joint control of the proprietary lines. It further says (224 U. S., 405):

> But the situation at St. Louis is most extraordinary, and we base our conclusion in this case, in a large measure, upon that fact. The "physical or topographical condition peculiar to the locality," which is advanced as a prime justification for a unified system of terminals, constitutes a most obvious reason why such a unified system is an obstacle, a hindrance and a restriction upon interstate commerce, unless it is the impartial agent of all who, owing to conditions, are under such compulsion, as here exists to use its facilities. The witness, upon whom the defendants chiefly rely to uphold the advantages of the unified system which has been constructed, Mr. Albert L. Perkins, gives this as his unqualified judgment. He was and is an experienced railroad engineer and manager and is the railway expert of the Municipal Bridge and Terminal Board, a commission appointed under a city ordinance, headed by the mayor, to study and report legislation needed to relieve the terminal conditions of St. Louis. From his study of the local situation he expresses the opinion that the terminals of railway lines in any large city

should be unified as far as possible, and that such unification may be of the greatest public utility and of immeasurable advantage to commerce, State and interstate. Neither does he find in the conditions at St. Louis any insurmountable objection to such unification. The witness, however, points out that such a terminal company should be the agent of every company, and, furthermore, that its service should not be for profit or gain. In short, that every railroad using the service should be a joint owner and equally interested in the control and management. This, he thinks, will serve the greatest possible economy, and will give the most efficient service without discrimination. When thus jointly owned and controlled, whether through the medium of a mere holding or operating company, such as the Terminal Company is, or by other means, the facilities would belong to each relatively to its own business and delivery would be made by each company over its own tracks to connecting lines or places of destination in the city. The charge for the haul thus lengthened would then be properly absorbed by the through rate, leaving nothing to be added to that to be charged the shipper or consignee but switching and storage charges proper.

This court said the practice of the Terminal Company in acting as a common railroad carrier and charging independently for the transportation of merchandise of every class for the haul between the proprietary lines on either side of the river

operated *to the disadvantage of the commerce* which must cross the river at St. Louis, Mo. It then refers to the arbitrary charge in the language above quoted (supra, pp. 17–20).

To remove the monopoly control of commerce and to prevent discrimination against the commerce of St. Louis, Mo., the complainant urged a dissolution of the Terminal Company, and in answer to this request this court said (224 U. S., 409), after reviewing the situation in the language herein set forth:

> The Government has urged a dissolution of the combination between the Terminal Company, the Merchants' Bridge Terminal Company, and the Wiggins Ferry Company. That remedy may be necessary unless one equally adequate can be applied.
>
> But the illegal restraint upon commerce among the States which we here find to exist consists in the possession acquired by the proprietary companies through the means and with the object we have stated of dominating commerce among the States carried on by other railroads entering or seeking to enter the city of St. Louis and by which such railroads are compelled either to desist from carrying on interstate commerce or to do so upon the terms imposed by the proprietary companies. This control and possession constitutes such a grip upon the commerce of St. Louis and commerce which must cross the river there, whether coming from the east or west, as to be both an illegal restraint and an attempt to monopolize.

This court then said, referring to the illegal monopoly power exercised by and resulting from the combination of the defendants as shown by the reorganization and operation of the Terminal Company (224 U. S., 410):

> Some of its abuses are shown by the imposition of the *arbitrary* hauling charge imposed upon the artificially limited trade districts described.
>
> Plainly the combination which has occurred would not be an illegal restraint under the terms of the statute if it were what is claimed for it, a proper terminal association acting as the impartial agent of every line which is under compulsion to use its instrumentalities. If, as we have pointed out, the violation of the statute, in view of the inherent physical conditions, grows out of administrative conditions which may be eliminated and the obvious advantages of unification preserved, such a modification of the agreement between the Terminal Company and the proprietary companies as shall constitute the former the bona fide agent and servant of every railroad line which shall use its facilities, and an inhibition of certain methods of administration to which we have referred, will amply vindicate the wise purpose of the statute, and will preserve to the public a system of great public advantage. [My italics.]

It is evident from the foregoing statements of this court that the Terminal Company will be allowed to exist as a terminal company provided it

operates merely terminal facilities and does not operate as a railroad making a charge upon St. Louis traffic between the proprietary roads on either bank of the river at St. Louis, and provided it ceases to charge the "arbitrary" upon St. Louis traffic and eliminates from the contracts and agreements between the proprietary roads the objectionable portions thereof as hereinbefore indicated. Bear in mind, now, that this court has declared the "arbitrary" charge as imposed to be unlawful and discriminatory as against the commerce of St. Louis, and that such arbitrary charge was one of the injurious results growing out of the combination of defendants to control through the Terminal Company the terminal facilities on both sides of the river at St. Louis, and bear in mind that this court held the Terminal Company could not charge as a main-line carrier for the haul between the proprietary roads on either side of the river, and bear in mind that it said that unless these abuses could be remedied it would be necessary to dissolve the Terminal Association, and bear in mind that it also said that the abuses might be eliminated by a compliance with the order it prescribed. Plainly it was the intention of this court that a decree should be entered and carried out *that would abolish the arbitrary and confine the Terminal Company solely to the operation of terminal facilities. Therefore, the court below in entering a decree should provide for abolishing the arbitrary and for confining the Terminal Company to the sole*

operation of terminal facilities; and this should be done in such a manner as to make the order of this court effective and give it vitality.

What has been the result of the "arbitrary" charge? This court answers the question in the following language (224 U. S., 408):

> The effect of this arbitrary discrimination is obviously injurious to the commerce and manufacturers of St. Louis, and is among the chief causes of complaint against the Terminal Company. Mr. Perkins, to whom we have before referred as a capable and impartial expert, says of the consequence of this curious exception out of the one hundred mile area rule, that "the effect of these charges was, of course, to put the man doing business in St. Louis at a disadvantage to that extent with the man doing business at East St. Louis on his eastern business." Again, he says that the practical operation was to give East St. Louis a distinct advantage in the manufacturing lines.
>
> * * * * *
>
> The effect of this practice of rebilling at East St. Louis and of imposing this arbitrary upon traffic originating within 100 miles of the city, destined to cross the river, seems to have been also applied to the large coal traffic between the Illinois coal mines, upon which the city is largely dependent.

This injury to the commerce of St. Louis, Mo., is to be removed by the decree. How can the decree remove it?

What was the arbitrary? Perkins, the defendants' witness, says it was the charge made by *the Terminal Association for the* specific service of transporting traffic from the cities of East St. Louis, Granite City, or Madison, Ill., as the case might be, to St. Louis, Mo., or from St. Louis to the points named. Again, Mr. Perkins in defining the " arbitrary " charge said:

> It [referring to the " arbitrary "] meant that the St. Louis receiver, so far as his eastern business was actually handled in St. Louis, *paid* the *amount* of the *bridge toll more than the man who did business in East St. Louis.*

This then is the " arbitrary " according to the defendant's witness, and is one thing *the court desired to abolish.* Now, if the charge for traffic to St. Louis, Mo., and East St. Louis, Granite City, and Madison, Ill., was the same, it is obvious the man doing business in St. Louis, Mo., so far as his eastern business was actually handled in St. Louis, *would not* be paying the amount of the bridge toll more than the man who did business in the Illinois cities named. Then the practical way to abolish this discrimination is to abolish the " arbitrary " charge by making one common rate to the cities of St. Louis, Mo., and East St. Louis and Granite City and Madison, Ill. The defendants admitted that the practical way to abolish the " arbitrary " charge is to make a common rate to the cities named above on each side of the river. The defendants

admitted this to be the practical way twice. First, when in 1908 they *voluntarily removed the "arbitrary" charge on freight traffic outside of the 100-mile zone and made the rate to St. Louis, Mo., and East St. Louis, Granite City, and Madison, Ill., the same and treated the cities as one common commercial center.* Second, when the defendants contended before the Interstate Commerce Commission that the rate on lumber should be the same to the cities named in Missouri and Illinois and when they acquiesced in the ruling of the Interstate Commerce Commission that the lumber rate to St. Louis, Mo., and East St. Louis, Ill., should be the same and a common rate. If the defendants abolish the "arbitrary" outside the 100-mile area by making a common rate to St. Louis, Mo., and East St. Louis, Ill., why is it not the practical way for the court to abolish the "arbitrary" within the 100-mile territory?

The remarkable spectacle is presented in the lumber rate case of East St. Louis, Ill., dealers complaining to the Interstate Commerce Commission *that* a *higher rate* to East St. Louis than was charged to St. Louis, Mo., was a *discrimination against* East St. Louis, claiming the two cities should *have a common rate* and the carriers increased the rate to St. Louis, Mo., and made a common rate to the two cities. Now, when St. Louis complains of *a higher* rate on similar traffic to St. Louis, Mo., *than is* charged to East St. Louis, Ill.,

the railroad companies contend that the discrimination is justified *against* St. Louis, Mo., while admitting that discrimination caused by a higher rate to East St. Louis, Ill., than is charged to St. Louis, Mo., can not be justified *and that a* common rate to both *cities should apply.*

This court holds that the terminal properties according access from the East St. Louis termini of the railroads to St. Louis, Mo., are terminal properties of the eastern roads and *that the eastern roads terminate in St. Louis, Mo.;* that the defense to this action by the defendants was solely that the St. Louis Terminal Association *was not a railroad* but was a *terminal facility only;* and unless it is held to be terminal property of the main-line carriers and simply a terminal giving access to the city, then it must be held to be a combination of competing and parallel roads which would be condemned by the Sherman Act. On this question the Supreme Court says (224 U. S., 407):

> *If the combination is to escape condemnation as a combination of competing and parallel railroads, it must be because of the essential difference pointed out heretofore between terminal companies and railroad companies proper.*

This court, after determining that the portion of the properties of the defendants used to connect the termini of the railroads in East St. Louis with the city of St. Louis, Mo., was terminal property of the eastern roads, necessarily held that the defendants

could not fix *an arbitrary zone of 100 to 200 miles* based solely upon distance from St. Louis, Mo.

This court also pointed out that of the large consumption of coal in St. Louis, Mo., a very great percentage came from points within the zone arbitrarily fixed by the railroads, and was compelled to pay this additional arbitrary charge, and the court held that this *resulted in a direct injury* to St. Louis, Mo., and was prejudicial *to its manufacturing and business interests,* and places its citizens at a disadvantage in competing with other cities similarly situated.

The extracts hereinbefore quoted from the opinion of the court show clearly that it found that *there was an "arbitrary" charge.* This finding is fully borne out by the facts in the record on the former appeal, as shown by the following excerpts from the testimony of Mr. Perkins, the expert traffic witness for the defendants, in volume 5 of the record, pages 2792–2795:

> Q. The situation prior to 1905 was that the east side lines acquired the terminals on the east, and the west side lines acquired the terminals on the west side, with the exception of the Rock Island, the Frisco, Wabash, the Missouri Pacific and Iron Mountain roads, which had some property on either side; and the east side lines, with the exception of those I have enumerated, had no terminals in the city of St. Louis proper, but their rates were made and their haul ceased at East St. Louis, Madison, or Granite City?—A. That

is substantially true for strictly eastern business, all except southeastern business.

* * * * *

Q. The haul from East St. Louis or Madison or Granite City, was made by either the Wiggins Ferry Company, the Terminal Railroad Association of St. Louis, the Merchants' Bridge Terminal Railway Company, the Interstate Car & Transfer Company, or the Southern, or Conologue Belt, operating with the Missouri Pacific transfer boats, at Ivory Ferry, wasn't it?—A. Yes.

Q. And that was a haul for which a charge was made for the specific service of transporting from the east side of the river, from the towns mentioned, East St. Louis, Granite City, or Madison, as the case might be, to St. Louis, Mo.?—A. Yes, sir.

Q. The practical operation of that was, that the rates were fixed by the east side lines, except on Green Line territory, to East St. Louis, and the business interests of this city, or the shippers, were compelled to pay the cost of the operating expenses across the river for the service that was performed?—A. They were obliged to pay the rates, whatever they were.

Q. Put it that way, then—pay the rates; and those rates were fixed, weren't they, or supposed to be, to pay the expenses of the Terminal Railroad Association of St. Louis?—A. Approximately. Some years there would be a deficit and some years they would come out all right.

Q. Was this charge independently made for the service of transporting goods and

passengers across the river imposed on any shipper of freight outside the limits of the city of St. Louis, where the merchandise passed beyond St. Louis from the east?—A. Yes; *up to, roughly, a radius of about 100 miles.*

Q. Beyond a radius of 100 miles north, south, northeast, and southeast of East St. Louis was this charge put on goods consigned to points beyond St. Louis and beyond St. Louis as a gateway?—A. I dont know that I quite caught that question.

Q. Was the arbitrary charge for hauling the goods across the river placed beyond the 100-mile radius, from points east of that radius to points west of St. Louis?—A. Yes, sir; there would be that charge for crossing the river on all business that came from east of the Mississippi River, through here, to points *within a* radius of from 100 to 200 miles west and north of here. Let me illustrate——

Q. I stated that proposition in my question. I said 100 miles and excluded it from my question. I understand this 100-mile radius goes west, likewise.—A. All right.

Q. So, a shipment *from* Boston to, say, *Nevada,* in Vernon County, *Mo., consigned* through the gateway of St. Louis, would *there be any arbitrary* charge for the *haul across the Mississippi River?*—A. No, sir.

Q. Then other points beyond the 100-mile radius east to points beyond the 100-mile radius west, there was no arbitrary charge?—A. *Those charges were entirely absorbed* in

the rate. *The railroad* companies paid those charges themselves to the Terminal Railroad Association for that.

Q. But *the* shipper paid *none* of it, as *did the man in St. Louis* who *received* the goods?—A. No, sir.

Q. What was the result of this practice of charging arbitrary on St. Louis consignments, as to affecting the business interests of St. Louis?

Mr. WATTS. The witness has not said there was any arbitrary.

Mr. CROW. Call it charge, or what you please.

A. *Oh, well, arbitrary and differential are sort of technical phrases, anyway.*

It makes no difference whether you call it arbitrary or differential, or what, it is an amount paid.

The effect of these charges was, of course, to put the man doing business in St. Louis at a disadvantage to that extent with the man doing business at East St. Louis on his eastern business.

It meant that the *St. Louis receiver*, so far as his eastern business was actually handled in St. Louis, *paid the amount of the bridge toll more than the man who did business in East St. Louis.*

Q. It was just that much more burden on the business?—A. It was just that much more burden on the business—well, at any rate, he paid that much more money; whether you call it more or a burden on the business I can hardly say.

Q. *Take a shipment from East St. Louis to, say, Independence, Mo., on the Missouri Pacific Railroad, would there be any distinct charge made to the consignee, if he paid the freight for the crossing of the river?*—A. *Not at the time*—I understand we are talking about 1903?

Q. Yes. On business originating in East St. Louis.—A. No, sir. *At that time he did not pay it, and had not for some years.*

Again, on pages 2924–2925 of Mr. Perkins's testimony, volume 5 of that record, he testifies that the reduction in the coal arbitrary obtained by the commission from the railroads saved the citizens of St. Louis $240,000 per annum. Again, on pages 2919, 2920, 2921 Mr. Perkins testified that as a railroad expert of the city's municipal commission he made a report to the municipal assembly June 6, 1906, pages 1 and 2, stating that the reduction in rates by reason of the removal of the bridge arbitrary to and from eastern points on St. Louis business destined *beyond the 100-mile radius from St. Louis* would save the citizens of St. Louis $800,000 per annum.

In the fifth report of the Municipal Bridge and Terminal Commission of the municipal assembly, made February 11, 1908, the following language is found on pages 1 and 2 (see vol. 5 of exhibits in Terminal case):

> In the report of May 24, 1907, reference was made to an arrangement perfected at a meeting between the executive traffic officers

> of eastern lines and your commission, on April 19, 1907, for the removal of the last of the *bridge arbitrary* differentials on business between St. Louis and points *beyond* a 100-mile radius. That arrangement has now been carried out.
>
> * * * * *
>
> These results from the commission's two years of negotiations on the rate-differential problem now mean, as aforesaid in the commission's fourth report, an actually accomplished saving to St. Louis merchants of about $2,000,000 per year.

The fact is that after the institution of this suit in 1905 the railroads made an arrangement with the Municipal Bridge and Terminal Commission for the readjustment of rates, and the arbitrary charge was removed upon practically all classes of commodities and freight from the *points outside of the 100-mile arbitrary zone* to St. Louis, Mo., so that now on shipments from the Atlantic seacoast to St. Louis, Mo., and on *shipments from points outside of the 100-mile arbitrary zone to St. Louis, Mo.*, East St. Louis, Granite City, Madison, and Venice, Ill., *are treated as one common commercial center by the railroads. Shipments from the Atlantic seacoast go to St. Louis, Mo., for the same rate that they go to East St. Louis, Ill.* These facts show that the court was right in saying that there was *an arbitrary* charge and that it discriminated against St. Louis City.

The result of this combination of the instruments of interstate commerce under the control of the Terminal Railroad Association was that the fourteen proprietary lines acting jointly through their holding company, the Terminal Railroad Association, fixed the freight rates to East St. Louis, Granite City, and Madison, Ill., and the city of St. Louis, Mo., and collected through the Terminal Railroad Association a specific rate and charge for the haul of interstate traffic between points last above named and the city of St. Louis, Mo., and compelled the people and the business interests of St. Louis, Mo., *to pay the original cost of and the operating expenses of the Terminal Railroad Association in addition to the usual and ordinary freight charges.*

The practical result of this has been to drive manufacturers away from St. Louis, and many have dismantled their plants in St. Louis and moved into Illinois, and cities in that State have had their growth stimulated at the expense of St. Louis. Granite City, Madison, and East St. Louis, Ill., owe practically all their population and business, and, in fact, existence, to the combination and monopoly of the agencies of interstate commerce controlled by the fourteen roads with its *resulting discrimination against St. Louis, Mo.* (Fourth Municipal Bridge and Terminal Report, pp. 4, 5, 8, offered and admitted in evidence in Terminal case.)

To make the burden more onerous to St. Louis people and shippers, a charge for the haul between the termini of the eastern roads in Illinois and the city of St. Louis, Mo., or the termini of the western roads in St. Louis, Mo., *was not imposed* directly upon any shipper or receiver of *freight passing through St. Louis either way* and destined to *points 100 miles beyond St. Louis.* But freight *originating in St. Louis and destined to points east of St. Louis* had to be *shipped over* the Terminal Association's property or hauled to East St. Louis, Granite City, or Madison, Ill., and then reshipped to the point of destination.

All railroad rates from the Atlantic seacoast were based upon Chicago, and a rate was never made to St. Louis, Mo., but to East St. Louis, Ill. This was the end of the haul of the eastern roads. The East St. Louis, Ill., rate was made by taking the rate from New York to Chicago as a basis and then it was figured that 16 per cent of the amount charged for the haul from Chicago to New York should be added to the rate from New York to Chicago, and this would be the New York to East St. Louis rate. *The Terminal Association then charged its published rate, according to its classified freight traffic, for the haul from East St. Louis, Granite City, or Madison, Ill., to St. Louis, Mo.*

On all through business coming from the east the railroads extending west from St. Louis, Mo., absorbed the charge for the haul from Illinois to the termini of the western roads in Missouri.

The result of this practice has been to create a difference in freight rates greatly in favor of the towns on the Illinois side of the river as compared with any suburban or similarly situated towns near any other city in the country, a difference amounting on general merchandise to 4 cents per hundredweight (that being the cost of crossing the river both ways), and this advantage being over the city of St. Louis. The practical result of this policy has been to stimulate the growth of East St. Louis and other Illinois cities at the expense of St. Louis, Mo., to such an extent that it has greatly crippled the development of St. Louis, especially along manufacturing lines. The fact is that the cities in the State of Illinois have all of the transportation facilities that the city of St. Louis has, and many advantages that the latter does not have. (Fourth Municipal Bridge and Terminal Report, pp. 4, 5, 8.)

After the institution of this suit a St. Louis bill of lading was given by the trunk lines to and from St. Louis in all directions and on *a portion* of the freight business *outside of* the 100 to 200 mile zone the proprietary lines absorbed the haul on the Terminal Railroad tracks, and across the bridges and ferries between the termini of the eastern roads in Illinois and the city of St. Louis, Mo. As the result of this partial recognition of the rights of St. Louis in this matter, a saving to St. Louis people of about $2,000,000 per year has been accomplished

and St. Louis is now on the railroad map *for some* purposes.

The following statement gives an idea of the effect of the change made by proprietary companies in freight rates on traffic *beyond* the 100 to 200 mile zone since the filing of this suit:

Bridge arbitrary claimed to have been removed in 1908.

Page 2889.	Cents.
First class	2
Second class	2
Third class	2
Fourth class	1½
Fifth class	1½
Sixth class	1½
Commodities	1 to 1½

Rates absorbed November, 1905–February, 1906: Second class, page 2890; fourth class, page 2892; commodities, page, 2893.

Arbitrary on flour, grain, and hay not absorbed, page 2896.

Arbitrary within 100-mile limit from East St. Louis unchanged, page 2897.

Rates from east in trunk-line territory: First, second, and third classes increased 1 cent; pages 2894–2899.

Rates to east in trunk-line territory: First class, increased 1 cent and second, third, and fourth classes increased ½ cent; pages 2895–2899.

Rates *to* and *from* east in central freight territory increased ½ cent on first, second, third, and fourth classes; pages 2895 and 2896.

Rates east of East St. Louis in trunk-line and central freight territory increased *except* to and from Chicago and Milwaukee; pages 2903 and 3904.

Rates on soft coal to East St. Louis (8,000,000 tons, 1907, p. 2924, or 43 per cent of total freight receipts into East St. Louis) were increased from 15 to 30 cents per ton (p. 151), or 100 per cent increase, and after reduction in May or June, 1906 (p. 2935), to 20 cents per ton it was still 33⅓ per cent more than before the consolidation in 1902.

In May, 1906 (p. 2932), coal rate from mines to East St. Louis was raised from 25 to 40 cents per ton (p. 2929), and later 2 cents more (p. 2930), making total *increase* in rate on coal, *after* Government *suit* was *brought*, 17 cents per ton, as against a 10 cents per ton reduction on terminal charge, and making total rate from mines to St. Louis 62 cents.

Increase on rates on coal was made at same time reduction was made in switching rates; pages 2932 and 2935.

After this action was instituted a commission was appointed by the city government of St. Louis, Mo., called the "Municipal Bridge and Terminal Commission," with the avowed object of securing some relief for St. Louis from the railroads. This commission appointed Mr. Perkins as a railroad traffic expert to advise it. The defense put him on the stand as their witness, and his testimony will be found separately in volume 5 of the record. This expert railroad traffic witness for the defense admitted, on pages 2794–95, volume 5, of the record, that the monopoly of the Terminal Railroad Association of interstate *business restrained the inter-*

state traffic and injured the business interests of St. Louis, Mo., and gave cities in Illinois an advantage over St. Louis, Mo., in the manufacturing business.

The record teems with demonstrations of still further injurious and direct influences of the combination upon interstate commerce.

When the railroads in 1908 removed the arbitrary on a large part of the traffic destined to or originating *in St. Louis, Mo., from points outside of the 100 to 200 mile zone, the roads made the same and a common rate for all such traffic outside of said zone to St. Louis, Mo., and East St. Louis, Ill.* This common rate to East St. Louis, Ill., and St. Louis, Mo., for instance, on shipments from Atlantic coast points, still maintains. The railroads by this act of removing the arbitrary on a large part of the traffic *outside of the 100 to 200 mile zone,* and making *a common and like rate* on similar classes of freight for St. Louis, Mo., and East St. Louis, Ill., treated St. Louis, Mo., and East St. Louis, Ill., *as one common commercial center and industrial city.* The defendants by yet maintaining said common rate for traffic to St. Louis, Mo., and East St. Louis, Ill., outside the 100 to 200 mile zone *now treat St. Louis, Mo., and East St. Louis, Ill.,* as one common commercial center. By defendants' own acts they admit that for traffic outside the 100 to 200 mile zone, St. Louis, Mo., and East St. Louis, Ill., have a common and like freight rate and *should be treated as*

one common commercial center. By thus treating St. Louis, Mo., and East St. Louis, Ill., as one common commercial center as to rates upon traffic outside the 100 to 200 mile zone, the defendants also recognize the fact pointed out by this court *in its opinion, that the properties owned and operated by the Terminal Company* in Missouri and Illinois *are simply* terminals of the *fourteen proprietary roads,* and that the termini of the *eastern proprietary lines are in St. Louis, Mo.,* and not in Illinois.

The record of this action of the defendants in treating St. Louis, Mo., and East St. Louis, Ill., as one common commercial center and giving a common and like freight rate to both cities on traffic outside of the 100 to 200 mile zone was before this court, and it knew that the removal of the arbitrary on traffic outside the 100 to 200 mile zone was *an admission by the defendants that discrimination had been wrongfully theretofore practiced against St. Louis, Mo.;* and it knew that the continuance of the arbitrary charge by the railroads upon all St. Louis traffic *within* the 100 to 200 mile zone *was a continuance of the exercise of one of the powers resulting to the defendants from their illegal combination, and,* therefore, by its order directing the removal of the arbitrary, it intended to abolish and *prevent in the future the illegal discrimination* against St. Louis, Mo., traffic arising from *the monopolistic power* of the defendants under the existing conditions through the imposition by them of

the arbitrary charge on traffic *within* the 100 to 200 mile zone, while not imposing it on like traffic *outside* said zone.

These were the facts before this court when it made its order as to the removal of the arbitrary. *It must be conceded that it intended to put an end to the violations of the Sherman Act it found to exist. It must be conceded that it has the power to make any and all orders necessary to carry out its judgment so as to give relief from the evils found existing and to prevent future violations of its decrees.*

This court intended to do for St. Louis, Mo., traffic *within* the 100 to 200 mile zone exactly what the defendants had themselves done as to St. Louis commerce *and traffic outside* of said zone, i. e., *remove the arbitrary charge* made by the defendants for the use of their terminal property on traffic originating at points *within* the 100 to 200 mile zone and destined to St. Louis, Mo. It intended that defendants should treat St. Louis, Mo., commerce and traffic both *within* and *without* the 100 to 200 mile arbitrary zone exactly alike *and that no arbitrary charge should be made* upon St. Louis, Mo., traffic *within* said zone that was not made upon traffic *outside* of said zone. It intended that *a decree be entered that should prevent discrimination against the commerce of St. Louis, Mo.,* by the imposition of an arbitrary charge within a zone designated by the defendants.

Recently the Interstate Commerce Commission had before it the case of *Lumbermen's Exchange of*

St. Louis v. *Anderson & Saline River Railroad Company et al.*, decided May 6, 1912, and found in 24 I. C. C. Report, page 220. The facts were that the St. Louis carriers from the Southwest (defendants in the case at bar), who were parties defendant before the commission, had advanced rates both upon hardwood and yellow pine from points of production in the Southwest to St. Louis, Mo., 1 cent per 100 pounds. The commission having declined to interfere by suspending the rate, a complaint was filed attacking the lawfulness of the advance. The carriers undertook to justify the advance upon the ground, among others, that properly considered, the tariffs were not intended to work an advance, but a *necessary change by placing St. Louis and East St. Louis upon the same rate basis.* The commission says:

> St. Louis, Mo., and East St. Louis, Ill., are separated by the Mississippi River, and the transportation of freight across this river at that point has always been expensive, whether by bridge or by ferry. Originally this expense was represented in the rates to these two localities, the general rule being that the rate to either city from any direction was lower or higher than to the other by the amount of the bridge toll. Thus rates from the west were higher to East St. Louis, while rates from the east were higher to St. Louis.
>
> Until recently, all lumber from these points in question has moved by the lines of the defendants up the west bank of the Mississippi River, and therefore, when intended

for East St. Louis, *has moved through St. Louis and across the river, the rate* being in all cases 1½ cents per 100 pounds *higher to East St. Louis than to St. Louis.*

The Iron Mountain road, for the purpose of securing a line with more favorable grades and curvatures, constructed a bridge across the Mississippi at Thebes and a line of railway up the east bank of the river from Thebes to East St. Louis. Operating conditions upon this line are much more favorable than upon the old line up the west bank, it being stated in this record that a locomotive which could only handle 900 tons over the old west-bank line can handle 2,000 tons over the new east-bank line.

While most freight for St. Louis by this new line crosses the river from the east to the west bank by ferry some miles below St. Louis, a considerable portion of it, especially at certain periods of the year, goes to East St. Louis and thence to St. Louis by bridge or by ferry.

The Cotton Belt Road has no rails of its own into either *St. Louis or East St. Louis,* but it leases trackage rights over the east-bank line of the Iron Mountain from Thebes to East St. Louis.

It will be seen, therefore, that from the date of the opening of the east-bank line of the Iron Mountain in 1904, a considerable portion of this lumber traffic reached St. Louis through East St. Louis, while the *balance of it reached East St. Louis, as formerly, through St. Louis.* By this arrangement East St. Louis became an intermediate

point with respect to a considerable amount of this business, and lumber dealers located at East St. Louis earnestly insisted that the maintenance of *the higher* rate there was in violation of the fourth section and an undue *discrimination under the third section.* These shippers had, previous to the filing of the tariffs attacked by the present proceeding, entered complaint with this Commission against *the higher rate* to East St. Louis.

The original adjustment of tariffs by which rates to St. Louis and East St. Louis differed according to the point of origin gradually disappeared. East St. Louis became an important commercial and industrial center. *The two cities were in effect the same, and carriers, in recognition of this fact, gradually established the same rates to these two localities. By 1910 it had come to pass that rates upon nearly all commodities from nearly all directions, except certain near-by territory, were the same to St. Louis and to East St. Louis.*

In view of these conditions the defendant carriers felt that they could not *successfully* defend the complaint brought by lumber dealers at East St. Louis. They believed that the time had come when these two markets *must be put upon the same rate basis with respect to this lumber traffic,* and, for the purpose of doing this, they filed these tariffs which are under consideration by which *the rate to St. Louis was advanced 1 cent and that to East St. Louis reduced ½ cent.*

The defendants are right in their claim that the time had come when this change must be made.

The Interstate Commerce Commission accepted the action of the defendants herein of treating St. Louis, Mo., and East St. Louis, Ill., *as one common commercial center* and *as one business district* and applying the *same railroad freight rate* to each of said cities as legal and correct. This court, by its decree, ordered *that discrimination by the* defendants between St. Louis, Mo., traffic *from within and from without* the 100 to 200 mile arbitrary zone should be abolished, directed that all traffic destined to St. Louis, Mo., should be billed through to St. Louis, Mo., and not billed, as theretofore to East St. Louis, Ill., and then rebilled by the defendants' Terminal Company to St. Louis, Mo. The paragraph submitted by the complainant as a proposed part of the final decree simply does for St. Louis, Mo., traffic *within* the 100 to 200 mile zone *what the defendants themselves have done for* St. Louis, Mo., traffic *without* the said zone; i. e., *treats St. Louis, Mo., and East St. Louis, Ill., as a common commercial center and as one business district and entitled to one common freight rate for similar traffic.*

The Interstate Commerce Commission has decided as above stated, that the two cities of St. Louis, Mo., and East St. Louis, Ill., should be treated as to rates as one commercial center and district. The railroads defended before the Interstate Commerce Commission the common rates they

had established on lumber for both cities on the ground that as to rates the two cities above mentioned should be treated as one; that the same rates for freight should apply to St. Louis, Mo., and to East St. Louis, Ill. This court in its opinion in the case at bar points out the discrimination practiced against St. Louis, Mo., as to rates and says it must cease, and directs a decree that will prevent it. Now, the carriers that are defendants in the case at bar went before the Interstate Commerce Commission in the case referred to, and maintained, first, that there should be no discrimination or difference in the freight rates between St. Louis, Mo., and East St. Louis, Ill.; second, that the practical way to prevent discrimination and to prevent a difference in the freight rate to St. Louis, Mo., and East St. Louis, Ill., was *to make one and the same rate for similar classes of freight to St. Louis, Mo., and East St. Louis, Ill.*

The defendant railroads have taken the stand before the Interstate Commerce Commission *that the practical working method from the standpoint of the operation of the railroads, to prevent discrimination in commerce and traffic between St. Louis, Mo., and East St. Louis, Ill., is to make one and the same freight rate for both cities.*

Now, we submit that this final decree should be in such a form that it will present a practical, workable arrangement for the carrying out of the judgment and orders of the Supreme Court. *It should not be a mere recitation of the order made by the*

Supreme Court. The order of this court directing entry of a decree abolishing the arbitrary charge imposed by the defendants on St. Louis, Mo., traffic *within* the arbitrary zone when not imposed on St. Louis, Mo., traffic *without* the said zone should be given *vitality* and *practical effect;* and we believe that as the object sought by that order was *to prevent discrimination against the commerce and traffic of St. Louis, Mo.,* and that as the defendants have maintained that the practical and effective way *to remove the discrimination is to make the same freight rate apply to St. Louis, Mo., and East St. Louis, Ill.,* therefore the decree should definitely enjoin that one and the same rate should be made to each of said cities upon St. Louis traffic, whether it is traffic *within* or *without* the 100 to 200 mile zone.

This court said that the maintenance of any arbitrary charge on St. Louis traffic within the 100-mile zone which is not equally imposed on St. Louis traffic outside of the 100-mile zone *creates a discrimination* against St. Louis, Mo., which is in violation of the Sherman Act, and therefore ordered *that the same rate* for St. Louis, Mo., traffic be applied *within as was applied without the 100-mile zone.* Now, the defendants say by their acts and admission in giving St. Louis, Mo., traffic outside of said 100-mile zone the same rate that is given East St. Louis, Ill., traffic that the same rate should apply to each city. This court in its opinion said that *the discrimination against St. Louis, Mo.,*

traffic within the 100-mile zone has resulted in a discrimination against St. Louis, Mo., commerce in favor of East St. Louis, Ill., commerce, and *that this discrimination is one of the results of the exercise of the monopolistic power of the illegal combination, which resulting discrimination is an illegal restrant of commerce and a violation of the Sherman Act.* Therefore, this court clearly intended to remove all discrimination against St. Louis commerce on the part of the defendants, and, as the defendants themselves *admit,* the way *to remove* it is to give *the same rate* to St. Louis, Mo., and East St. Louis, Ill.

The complainant submits that the injunctive order requested by it to make one and a common rate to St. Louis, Mo., and to East St. Louis, Ill., on traffic *within* as well as on *traffic without the* 100-mile zone, is the practical method by which all discrimination against St. Louis, Mo., traffic and the violation of the Sherman law as found to exist by this court can be removed.

The defendants *now* impose the *arbitrary* charge on all the St. Louis, Mo., traffic *within* the 100-mile zone, while not charging it on St. Louis traffic *outside* said zone.

The complainant's proposed decree enjoins the defendants from charging other than a common rate to St. Louis, Mo., East St. Louis, Granite City, Madison, and Venice, Ill., and requires delivery to be made upon the terminal tracks in any of the

above-named cities or towns to which a bill of lading is issued. This would prevent all discrimination and abolish the "arbitrary" and treat the cities named as one common commercial center.

IV.

CONCLUSION.

The final decree as entered by the District Court should be set aside and that court should be directed to enter a decree substantially in the form proposed by the Government; or, in the alternative, a decree should be entered by this court dissolving the combination.

EDWARD C. CROW,
Special Assistant to the Attorney General.

SEPTEMBER, 1914.

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In the Supreme Court of the United States.

OCTOBER TERM, 1914.

THE UNITED STATES OF AMERICA, appellant,
v.
THE TERMINAL RAILROAD ASSOCIATION OF St. Louis et al.
No. 452.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

REPLY AND SUPPLEMENTAL BRIEF FOR UNITED STATES.

STATEMENT.

This court, in its opinion heretofore rendered in this case, found that an "arbitrary" charge in addition to the regular freight rate on St. Louis traffic was made and collected by defendants, and to make and collect such charge defendant used the combined properties of the Terminal Railroad Association as a transportation company as distinguished from a mere terminal company.

This charge the court found was a result of the use of the monopoly power over interstate com-

merce, held by defendants, and that it was an illegal discrimination against St. Louis traffic. (See opinion *United States* v. *Terminal Railroad Association et al.*, 224 U. S., pp. 391–409.)

In the above-cited case there was no motion filed by defendants in this court for rehearing.

The defendants seek in the present proceeding to review the finding of fact heretofore made by this court and set forth in its opinion that an "arbitrary" charge was levied by defendants on St. Louis traffic in such manner as to discriminate against said city's commerce; and also seek to review the conclusion of law and the order of this court based on said findings.

The attempted review is shown by the following excerpts from defendant's brief herein, on pages 6, 7, and 39:

> Another supposed practice which this court condemned is this: That the Terminal Association charged its published tariff rates for the use of its terminals for all traffic originating within a zone of one to two hundred miles east of East St. Louis and destined to St. Louis, but did not apply the same rate to a like class of traffic originating beyond that zone.
>
> *This is a misapprehension of fact on the part of the court.* (Italics ours.) It is not difficult to understand why the court was misled in this respect. The record in this case is very voluminous and discursive. There were four volumes of record contain-

ing nearly 3,000 pages, four volumes of exhibits containing nearly 3,000 pages, and a ninth volume containing about 250 pages, making in all nearly 7,000 printed pages of record. * * *

Frequent reference is made in the testimony and in briefs of counsel to a charge that is called the "arbitrary," or "bridge arbitrary," or "terminal arbitrary." These terms were not defined in the record.

No issue was made in the pleadings as to the impropriety of rates established by the proprietary companies in the operation of their respective lines or as to the reasonableness of the rates for terminal services.

The Terminal Association published in the manner required by law its schedule of traffic charges, and after 1902, when the unification of the terminals was, in fact, completed, there was no abatement by the Terminal Association in this schedule rates, which at all times were only sufficient to meet the operating expenses, betterments, and extensions of the terminal system.

We understand the truth concerning this matter to be this: That within a certain area the railroad companies, whether proprietary or nonproprietary, make a rate which is plus the tariff-sheet charge of the Terminal Railroad Association; within another area, beyond that of the first in mileage, a rate is made which is plus only a part of the terminal tariff; and within an extensive area outside of the last the railroads make a rate which is minus the terminal charge. This

> is what is called an absorption of terminal charges in the through railroad rate. In the first area the railroads can not afford to absorb any part of the terminal charge, because of the smallness of the compensation which comes to them in the initial carriage. Within the next area they can afford to absorb a part of the terminal charge, because of the greater amount of compensation received. Within the third area they can afford to absorb all of the terminal charge, because of the increased compensation which they receive owing to the increased mileage. This is in no sense an arbitrary of the Terminal Association and in no sense peculiarly applicable to railroad rate making as to St. Louis traffic. It applies as well to New York, Philadelphia, Boston, Baltimore, and Washington as to St. Louis, and is, in fact, a principle of rate making established by the railroads and approved by the Interstate Commerce Commission.

Defendants' counsel then quote at length, on pages 8, 9, 10, and 11 of their brief herein, excerpts from testimony of defendants' witness, Mr. Perkins, in an effort to show that this court was mistaken in its finding as to the fact of an "arbitrary" existing and the further fact that it was a discrimination against the commerce to St. Louis.

This being a second appeal in this case subsequent to mandate from this court and being a proceeding to bring under review a final decree entered in pursuance of the above-mentioned mandate, it is

important to inquire what questions can be heard upon this second appeal.

What questions can be heard on second appeal.

The only questions in an appeal from a proceeding to enforce a decree on mandate is whether the trial court has conformed its further proceedings to the directions of the appellate court. (12 Peters, 488; 20 How. (U. S.), 542; 96 U. S., 466; 12 Wallace, 129; 99 U. S., 261; Encyclopedia of Pleading and Practice, vol. 1, p. 378.)

No review of facts or law of case on subsequent appeal.

The principles of law and questions adjudicated on an appeal will not be reviewed as between parties and privies on a subsequent appeal in the same cause. (12 Peters, 488; 20 How. (U. S.), 542; 96 U. S., 466; 12 Wallace, 129; 99 U. S., 261; Encyclopedia of Pleading and Practice, vol. 1, p. 378.)

In 12 Peters, 488, this court said: "Appellate power is exercised over the proceedings of inferior courts not in those of the appellate court. The superior court has no power to review their decisions whether in a case of law or equity."

Findings of fact equity cases on subsequent appeal conclusive.

In equity cases on an appeal subsequent to mandate findings of fact on first appeal are conclusive. (45 Mo. App., 193.)

The defendants can not therefore be heard in this court on the question as to whether or not the

record justified the finding of fact as set out in the opinion of this court that an " arbitrary " charge was made by defendants on St. Louis traffic that was not made on similar traffic without a given zone, nor can they be heard on the question of whether such charge was a discrimination nor on the question of law that the Court's conclusions were wrong on the facts. The decision heretofore made on both law and fact is conclusive on defendants herein.

No exception to final decree necessary in order that it may be reviewed on appeal.

An appeal is itself an exception to the judgment or any other matter appearing upon the face of the record. (Century Digest, vol. 1, sec. 267, appeal and error, 5 C; *Nalle* v. *Oyster*, 130 U. S., loc. cit., pp. 176–177; 176 Pacific, R., p. 681; 194 Fed., loc. cit., p. 22. Foster's Federal Practice, 5th Ed., vol. 2, p. 1259; 185 Fed., p. 689.)

The right of appeal in United States unless otherwise authorized by statute is limited to appeal from final decrees. (Foster's Federal Practice, 5th Ed., vol. 1, p. 817.)

On appeal from final decree all errors apparent in the record are open to review.

The appeal from the final decree brings up all orders, interlocutory and otherwise, affecting the merits of controversy unless statute provides differently. (130 U. S., p. 482; 194 Fed., loc. cit., p. 22; Foster's Federal Practice, 5th Ed., vol. 2, p. 1259.)

By statute appeal in antitrust proceedings only from final decree to Supreme Court.

The act, approved February 11, 1903, amending the Sherman law provides:

> An appeal from the final decree of the Circuit Court will lie only to the Supreme Court. (32 United States Statutes at Large, p. 823.)

It is evident, therefore, that it is intended on an appeal from final decree in the Circuit Court that Supreme Court should review the complete record in the case.

The *Omaha Council Bluffs case* (7 Interstate Commerce Commission R., 386) and the *Chicago Stock Yard case* (217 U. S., 98) and the *St. Louis Hay and Grain Co. case* (214 U. S., 297), all cited and referred to by counsel for defendants herein as authority for making the "arbitrary" charge, were all cases arising under the interstate commerce act and did not involve the enforcement of the antitrust act or any construction of said act and therefore are no authority upon any question involved herein.

The Government is entitled to a dissolution of the Terminal Association.

The defendants refused to obey the order of this court requiring them within 90 days to agree upon a plan of reorganization with the representatives of the Government. This court's order provided that if no such agreement was reached the lower court should hear the parties to the litigation upon

a plan for the dissolution of the Terminal Company and the future independent operation of the Wiggins Ferry Company, the Merchants' Bridge Company, and the Terminal Company. The Terminal Company refused to agree or attempt to agree with the Government upon a plan for the reorganization of the three combined properties, claiming the order of this court meant that the defendants should agree among themselves on a plan and submit it to the court without consulting the Government.

This court also ordered that the Terminal Company could continue to exist *only upon condition it ceased making charges as a transportation company and cease being operated as such and operate only as a terminal company.*

The defendants refused and now refuse to obey this order of this court, claiming the charge made is not an "arbitrary" and *that this court labored under a misapprehension when it made the order contained in the fifth paragraph of the opinion abolishing the "arbitrary."*

This court has consistently and vigorously upheld the Sherman Law, and if its provisions, as construed by this tribunal, are enforced by proper decree by the lower courts giving vitality and practical effect to this court's orders in the antitrust prosecutions the violation of law will soon cease.

In cases of this character where enforcement of the orders of this court to eliminate monopoly combination and prevent future violation of law is

entrusted to lower courts to carry out it is evident that efficient decrees must be entered in the District Courts and the spirit as well as the letter of the order of this court must be clearly enunciated and strictly and vigorously enforced; otherwise the ultimate end sought in this class of litigation, to-wit, abolition of unreasonable restraint of trade and prevention of future infraction of the laws, *is thwarted.*

If the orders of this court in this class of cases are promptly and efficiently enforced respect for and strength is added to the law; but if the orders of this court are not enforced, if they are defied, if they are *evaded* by unnecessary delays or by meaningless decrees, this court and the whole administration of the law is brought into disrepute.

The orders of this court made two and one-half years ago have not yet been carried out and the defendants refuse to carry them out because in one instance they *claim the Government should not be consulted* about the reorganization of what this court found to be a monopoly, and in another instance because the defendants say *that this court misapprehended* and did not *understand the record* when it made the order contained in the fifth paragraph of the orders set forth in the opinion in this case.

The Government therefore submits that this is clearly a case where the defendants are justly entitled to suffer the penalty of corporate dissolution of the Terminal Railroad Association of St. Louis

as a result of willful refusal to obey the plain orders of this court, and therefore the complainant insists that the order of dissolution be made for the corporate dismemberment of the combination between the Terminal Railroad Association of St. Louis, the St. Louis Merchants Bridge Terminal Railway Company, the Wiggins Ferry Company, and their respective allied and constituent companies, and that such orders be entered as will secure the future independent operation of the three last above-named corporations and their allied and constituent companies.

What constitutes the arbitrary and how it is imposed.

The 14 defendant proprietary roads have bought and now operate as one combined property the tracks on both sides of the Mississippi River at St. Louis, Mo., and the bridges and ferries of the Wiggins Ferry Company, the Merchants Bridge Company, and the Terminal Railroad Association of St. Louis, Mo. These 14 railroads extend in all directions, to either ocean, the Great Lakes on the north, and the Gulf on the south, and have over fifty thousand miles of main track.

Before this action was begun East St. Louis, Ill., was the point to which all shipments from east, north, or south destined to St. Louis from points east of the Mississippi River were billed. All shipments from St. Louis to any point east of Mississippi River had to be billed to East St. Louis and then rebilled. *St. Louis was not on the railroad map. No rates were made to St. Louis, Mo.*

Before this suit was begun *all traffic originating in or having St. Louis as a final destination* and crossing the Mississippi at said city had imposed upon it an average " arbitrary " charge of 2 cents per hundred pounds in addition to the regular freight rate to or from East St. Louis, Ill.

The method of collecting this additional charge on St. Louis traffic was as follows: The 14 defendant roads organized a company known as the Terminal Railroad Association of St. Louis, and this company acquired the old original bridge known as the Eads Bridge, together with the tracks and approaches leading thereto, and also the control of the second bridge and its tracks and approaches known as the Merchants Bridge, and also the Wiggins Ferry Co., with its boats and its tracks. This control was acquired by purchase of the stocks of the three above-named companies.

These companies had many miles of tracks and many warehouses and freight depots on either side of the Mississippi River, including the great passenger station at St. Louis, Mo. The control of these properties by reason of the topographical situation at St. Louis (which is fully set forth in the opinion of this court in this case) gave the defendant proprietary companies through ownership of the Terminal Railroad Association of St. Louis, the absolute control and monopoly of trans-Mississippi River commerce at St. Louis, Mo. Having this control the defendants billed all St. Louis traffic to East St. Louis, Ill., and it was, if *destined for*

St. Louis, Mo., then rebilled over the properties of the Terminal Railroad Association to St. Louis, Mo. If it originated in St. Louis, Mo., and was destined to a point beyond East St. Louis, Ill., the shipper was compelled to reach one of the eastern lines of railway by billing the shipment over the Terminal Railroad Association property to East St. Louis, Ill., where it was *again rebilled* to its destination.

Now, for the haul over the tracks, bridges, and ferries of the Terminal Railroad Association an *independent charge* as a *railroad common carrier was* made by the Terminal Railroad Association. This, of course, constituted the Terminal Company an *ordinary railroad* carrier and transportation company. Now, as the Terminal Company's stock was all owned by the Terminal Company and it was operated by the 14 defendant proprietary roads, the 14 roads were *simply interposing the tracks,* lines, bridges, and ferries of the Terminal Company, which they owned, as *an independent carrier between the termini of the defendant roads* that operated east of the Mississippi River and the termini of those of the 14 defendant roads which operated west of the Mississippi River; and this charge of course was paid by the shipper in addition to the freight rate to East St. Louis, Ill.

On business originating in or finally destined to East St. Louis, Ill., moving east or west across Mississippi River over the above-named terminal prop-

erties no charge of any kind for the haul over the terminal properties was made by the Terminal Company or by the 14 roads. This was the situation when this action was commenced in 1905.

Subsequently, as hereinafter recited, the municipal commission after the filing of this suit induced the railroads to remove the charge made by themselves through the Terminal Association for the haul over the terminal properties between St. Louis, Mo., and East St. Louis, Ill., or other junction point, on all traffic originating in St. Louis, Mo., and *destined to points beyond an irregular designated area covering approximately 100 to 150 miles from St. Louis, Mo., or originating beyond said above-described territory and destined for St. Louis, Mo., and which territory in the said described boundaries was called the 100-mile territory.*

The arbitrary charge was made on all St. Louis traffic of every kind from and to every point before this suit was begun in 1905.

The conditions before the filing of the suit and at the time of the institution of the proceedings are well shown by a report of a municipal commission appointed soon after this action was started by the Government, which commission was appointed to obtain the abolition of the "arbitrary" and better railroad facilities for St. Louis. The following extract from the commission's first report made November 15, 1905, discloses that the "arbitrary" was a continuing discrimination against St. Louis,

Mo., and was then charged *on all traffic* originating in or destined to St. Louis, Mo.:

> *To the honorable the Municipal Assembly, St. Louis, Mo.*
>
> GENTLEMEN: The Municipal Bridge and Terminals Commission, appointed by the mayor under the direction and authority given him by ordinance No. 22026 of your honorable body, respectfully submits the following preliminary report:
>
> Your commission in beginning its work believed it unwise to attempt a solution of both branches of the problem at the same time; that is, the question of rates, methods of billing and terminal charges, and the question of improved facilities for handling freight in this city. Such a course would most naturally have involved some kind of a bargain—a possible demand for some concessions from the city for every one granted by the railroads—and your commission determined that, first of all, absolute justice should be obtained for St. Louis in the matter of rates, methods of billing, terminal charges, bridge tolls, etc., without any entangling "ifs" or promises whatsoever on the part of the city.
>
> Early in the summer negotiations were begun, but many unavoidable delays were encountered which taxed the patience of the commission as well as of all our citizens. With few exceptions, those railway officials residing in this city did not possess the necessary authority to decide questions of such importance as the one placed before them

by your commission. Any action taken by a few would not be recognized by the others.

After many conferences it was found that this matter rested wholly in the hands of the east-side trunk lines, and that the Terminal Railroad Association, of itself, had no authority to act. The east-side trunk lines appointed a special committee, with full authority to act, representing all the lines in interest, and this committee held a meeting with your commission, at which a statement was presented which embodies the railroad-rate grievances of the city of St. Louis, familiarly known as *the bridge "arbitrary,"* and firmly demanded the abolition of all discriminating charges. The document presented by your commission to the railroad committee was as follows:

"The city of St. Louis has for many years been struggling to free itself from what is known as the bridge arbitrary.

"The situation as it exists to-day, and has existed for many years, is that instead of acquiring independent and adequate terminal facilities within the limits of this city, as is done by the railroads in nearly every other great center, and often at enormous cost, several railroads centering in St. Louis formed or became parties to a corporation known as the Terminal Railroad Association of St. Louis, which has acquired or constructed the present existing terminals, which terminals by virtue of the extensive franchises under which they exist, are certain to be used by all railroads entering the

city. These terminals are used and operated in the joint interest of the proprietary lines.

"In other cities, where a single road even when it is unassisted by the joint operation of other lines, is compelled to acquire terminals at a vast outlay, the cost of that investment is regarded as being as much a part of the main system as would be an extensive tunnel or a bridge midway between stations.

"The more economical method adopted in St. Louis, if fairly used, would result not only in giving increased facilities and economy to the railroads but to the shippers.

"Instead of producing that result through the absorption of these local charges in their general traffic, the transportation companies have fixed a rate to East St. Louis and compelled the business interests of this city to pay the cost and operating expenses of these terminals through this bridge arbitrary.

"To make the burden more onerous to St. Louis shippers, the bridge charge is not imposed directly upon any shipper or receiver of freight outside the limits of St. Louis, where such merchandise passes through the terminals. Growing out of this arrangement and through the many complications and adjustments of through rates, the railroads on the west side of the river, on all business passing through St. Louis, absorb this arbitrary charge, and it is not paid by the consignee.

"The result of this practice has been to create on the east side of the river a differ-

ence very greatly in its favor as compared with that of any suburb or similarly situated point in any other city in this country, the difference amounting to, say, on general merchandise, 4 cents per hundredweight (that being the cost of crossing the river both ways), and this advantage being over the city of St. Louis. At the same time, East St. Louis is given all the distributing facilities created by the city of St. Louis on the west side of the river, without any bridge expense whatever, the west side roads assuming the cost or transfer in carloads (and less than carloads, through the St. Louis Transfer Company) from East St. Louis to points west of St. Louis. In whichever direction the freight may go from St. Louis, either east or west, East St. Louis is given the advantage of the bridge charges.

"The result of this policy has been to stimulate the growth of East St. Louis, at the expense of this city, to such an extent that it has greatly crippled this city's development, and especially along manufacturing lines, until the situation has approached a climax.

"While there have been many explanations concerning the necessity of this policy, which are more or less specious in their nature, no satisfactory argument has yet been advanced to justify this so-called bridge arbitrary. To the contrary, it is generally understood that the railroads in interest realize that the condition is unusual and there-

fore unnatural. It is said, however, that, growing out of this condition which was originally created by them, is a system of through tariffs to various competitive points in the West, Northwest, and Southwest which mention East St. Louis as the basing point, and that the absorption by the east-side roads of this arbitrary charge would produce complications which must be adjusted in advance before they can be put into effect.

"It is believed by many shippers that there is no more reason why this should affect the basing rates than if the language used in framing the western road agreement had mentioned Fiftieth Street or One hundredth Street in Chicago, as the basing point, rather than Chicago proper. The question is whether or not the east-side roads shall absorb the 2 cents per hundred weight charge on merchandise on business entering this city, or the roads recognize the trackage between East St. Louis and St. Louis as joint property, as is often done in other terminals, or on many miles of track which are used jointly by more than one road, many instances of which might be cited. This, on the theory that the 2 cents per hundredweight charge on shipments from St. Louis to Indiana and Illinois points would also be disposed of. We do not see how this would affect the freight-rate agreement in any section of the country, so long as the rates from St. Louis to such sections of the country remain as they now are.

"In any event, while this readjustment (if, in fact, any is required) might affect some St. Louis westbound freight, it can hardly affect the vast mass of business, nor would the present conditions ever satisfy the people of St. Louis who have seen some of the largest manufacturing plants on this side of the river wrecked and located on the other side or elsewhere, and who are daily confronted by the objections presented by those manufacturers who are seeking a new location and who, under favorable conditions, might be brought to St. Louis.

"Admitting, what is doubtless true, that the plan of the terminals as built, with a reasonable promptness in transfer from East St. Louis, might be made equal to any in the United States, nevertheless the present condition is repellant to newcomers and has become notorious throughout the United States as a condition adverse to the prosperity of St. Louis.

"The statement that the city in Illinois has certain transportation advantages which we have not, and has practically all of our transportation advantages without expense to them is unanswerable.

"These are the generally admitted facts.

"We, therefore, most respectfully ask that you take such action as will relieve the city of St. Louis of all discriminating burdens."

Signed by the Commission.

Origin of the 100-mile zone.

Subsequent reports of the commission show that the commission succeeded in getting the railroads

to abolish the " arbitrary " charge on all business beyond a zone approximately 100 miles east, north, and south from St. Louis in Illinois. *This left* the *large coal fields of Illinois within* the territory where the arbitrary *charge was still made.* The tonnage moved annually to St. Louis by the railroads from the fields amounts to about eight or nine million tons of coal on which the *railroads are yet collecting* the 20 cents per ton *as an arbitrary charge.* The railroads discriminate against St. Louis, Mo., by the imposition of this charge, and it is evident the *reason for the establishment* of the arbitrary " 100-mile zone " was *the location therein of the great bituminous coal fields of Illinois, which constitute the fuel supply of St. Louis, Mo.*

The fifth order of this court in this case abolished the arbitrary within the 100-mile zone.

Discrimination outside the 100-mile zone has been eliminated by the defendants removing the " arbitrary " charge on the demand of the citizens of St. Louis, Mo. The bridges and ferries and tracks of the three companies jointly owned by the 14 defendants *are properly used as terminal properties* of the 14 proprietary lines for all traffic *without* the 100-mile zone and the *rate on all such* traffic is the *same* to *both sides* of the river and to *the towns and cities of St. Louis, Mo., and East St. Louis, Ill., and Granite City, Madison, and Venice, Ill.;* and St. Louis, Mo., and the above-named *Illinois cities are treated as one common commercial center.*

This was accomplished in the manner above stated after the beginning of and before this *case was submitted to this court, and this was the condition when the opinion was delivered* and the record discloses that the court know when it made the order referring to the " arbitrary " charge that the defendants had given a *common rate to St. Louis, Mo., and East St. Louis, Ill.*, and had thereby *abolished the " arbitrary " outside* the 100-mile zone, and had made these cities one common commercial center, and what was said in the opinion referring to *abolition of the " arbitrary " was intended to apply to the " arbitrary " as it existed, to wit: The " arbitrary " charged upon traffic within the one hundred mile zone.* There was no other arbitrary. What else could it mean but the abolition of this " arbitrary "? The " arbitrary " on traffic *outside* this 100-mile zone had already *been abolished* by the defendants upon demand of citizens of *St. Louis, Mo., making one common rate to St. Louis, Mo., and East St. Louis, Ill.*

We see then that this " arbitrary " charge was alleged by the citizens of St. Louis, Mo., to *be a discrimination* against St. Louis commerce that was unjustified and the *defendant roads admitted the charge by compromising* with the citizens of St. Louis and removing the " arbitrary " on all traffic *outside* of the 100-mile zone. This removal *eliminated* any claim of *right* the defendants might have had in levying this " arbitrary " charge on St. Louis commerce, because if the " arbitrary " charge

was a discrimination against St. Louis commerce when *applied to all* of its traffic it is yet a discrimination when applied to *a portion thereof constituting all traffic within an "arbitrary" established zone of one hundred miles*, unless there is something in the nature of the movement of or surrounding the traffic itself within the prescribed territory that would justify the discrimination.

Let us for a moment examine (not because necessary, for the question of discrimination was settled by the opinion and the order of this court in this case) the argument the defendants make to justify this discrimination within the arbitrary zone above indicated. The claim is made that the rate allowed for the short haul to East St. Louis, Ill., by the Illinois Railroad & Warehouse Commission is so low that the coal tonnage of eight or nine millions of tons can not be profitably moved without the addition of the "arbitrary" charge of 20 cents per ton for the service of crossing the river. In the first place, this court has settled the proposition that a carrier can not enforce a rate fixed by a State board which results in unjust discrimination against some locality in the movement of interstate commerce. In the next place, as shown by the record, there are points within the "arbitrary" 100-mile zone established by the defendants in Illinois distant from St. Louis, Mo., 125 to 130 miles, and from which coal is hauled to East St. Louis, Ill., at the same rate charged for hauling coal from other Illinois points 10 to 20 miles to East St. Louis, Ill.

The deduction from these facts is that either the rate from the near-by 10-mile mines is too low or the rate from the mine distant 125 to 130 miles is not high enough, but be that as it may the defendants can not justify a discrimination against St. Louis in interstate commerce upon the ground that the act of a State commission in Illinois compels *the discrimination* to enable the carrier to receive adequate returns for services rendered.

But all this is aside from any question now for determination, because this court decided on the record submitted that the "arbitrary" rate charged as *a transportation company* for the service performed by *a haul over the properties* of the Terminal Association was *a discrimination and illegal and should be abolished;* and, therefore, the only question properly to be decided here is, Has a proper decree been entered in the lower courts to *abolish it and has that decree been carried out and the "arbitrary" charge been eliminated?*

No need for this court to make an order abolishing the "arbitrary" *outside* of the 100-mile zone; its discrimination and injustice has been *admitted by defendants;* and, to avoid its abolition by decree of court, the defendants on demand of the citizens of St. Louis, Mo., removed it. But in the court below counsel for defendants *contended no arbitrary* charge was made; and as this court had found such a charge was made, counsel were driven to assume the position that this *court had misapprehended the record*, and counsel *asked the lower*

court to enter a decree on the assumption that *this court did not understand the record in this case and made a misake in entering the fifth order in the opinion.* If this court made a mistake as to the record the attention of this court should have been promptly called to it by the *counsel for the defendants when the opinion was delivered.* This is no time to retry the facts as found from the record by this court. But this court *made no mistake* when it found from the record that an arbitrary charge was made by the defendants.

The testimony of Mr. Perkins, a traffic *expert introduced by the defendants,* conclusively shows there was an arbitrary charge made and *it is now being made despite the order of this court that it should be abolished.*

The report of the Municipal Bridge and Terminal Commission introduced in evidence and hereinbefore referred to *conclusively shows that the arbitrary was charged and was abolished beyond the one hundred-mile zone as stated.* That this is true is conclusively shown by the following paragraph in the opinion of Judge Hook, written and filed at the time the interlocutory decree herein was entered below (printed record; here in 64–66):

> 7. In considering the fifth paragraph it should be borne in mind that the Supreme Court holds that the Terminal Association can lawfully operate only as a terminal agency of the various carrying railroads. As such it may make the usual charges for

terminal services like switching and warehousing, but it can not lawfully interpose itself as a transportation company between western roads in St. Louis, Mo., and the eastern roads in East St. Louis, Ill., and make charges for service of that character. It logically results from this that the two cities (and certain towns to which for brevity no further reference need be made) constitute one commercial and manufacturing center connected and served by an aggregation of terminal facilities in which all the railroads are or may be interested and which all may use. As regards transportation rates the several localities of this industrial center should be upon a parity without discrimination, arbitrary or differential; otherwise the association becomes at once an unlawful combination of carrying railroads. The prohibition in the fourth paragraph of the practice of requiring shippers to rebill at East St. Louis the traffic destined to St. Louis or beyond is in line with this view; also the court's reference to the exceptional physical situation in that locality. The testimony before the Supreme Court discloses the conditions to which the fifth paragraph is directed. It shows that no distinction was being made between St. Louis and East St. Louis in respect of rates on traffic originating or destined outside of an irregular area about those cities having a radius of approximately 100 miles. In respect of those rates the cities were one. Mr. Perkins, the witness referred to in the opinion, said by

way of example: "A shipment coming from, say, Kansas City to St. Louis has the same rate as a shipment coming from Kansas City to East St. Louis." He also said the two cities were on a parity as regards rates on westbound shipments from points outside the area referred to. But the situation was entirely different as to rates on traffic originating and ending within the limited area. Concerning these, Mr. Perkins testified as follows:

"But the basis of rates between St. Louis and points within the 100-mile radius east of here is higher than between East St. Louis and those points, taken by itself. The basis of rates between East St. Louis and the points within 100 miles west of here is higher than the basis of rates between St. Louis and points west of here."

The report of the Municipal Bridge and Terminal Commission to the Municipal Assembly of St. Louis on February 11, 1908, contains this paragraph:

"In the report of May 24, 1907, reference was made to an arrangement perfected at a meeting between the executive traffic officers of Eastern Lines and your commission, on April 19, 1907, for the removal of the last of the bridge arbitrary differentials on business between St. Louis and points beyond a 100-mile radius. That arrangement has now been carried out."

In view of some contentions of defendants' counsel which will be presently mention three things about the above excerpt

may be noted: *First*, the charge in question is referred to as a "bridge arbitrary differential"; *second*, the charge was removed from business outside the 100-mile radius; and, *third*, the removal was effected by arrangement with "Eastern Lines," not with the Terminal Association. Counsel asserts the right of defendants to continue within the 100-mile area the additional charge as between the two cities which was removed outside, and in this, as I understand it, they are upheld by my brothers. Counsel for defendants say in their brief:

"We understand it to be true that the railroad companies, parties to the case, make a higher charge for St. Louis than East St. Louis on some traffic originating within the so-called 100-mile area. There is a zone beyond the 100-mile area, in which the entire charge for the use of terminal facilities of the Terminal Association is absorbed in the through railroad rates, making the East St. Louis rate applicable to industries on the Terminal Association and railroads in St. Louis."

They contend this was not what the Supreme Court had in mind, but since the record shows no other existing condition to which the fifth paragraph could apply they are driven to the suggestion that the Supreme Court labored under a misapprehension because the charge now made is not an arbitrary and is not imposed by the Terminal Association but by the railroads. It is not important what this charge for transporta-

tion across the river between St. Louis and East St. Louis may be called. In the testimony it was referred to interchangeably as an arbitrary, a differential, and a special charge. The Supreme Court referred to it as " a special or so-called arbitrary charge." Mr. Perkins said: " It makes no difference whether you call it arbitrary or differential, or what, it is an amount paid." And as we have seen the Terminal's Commission referred to like charges on traffic coming from or destined outside the area as " bridge arbitrary differentials." It is equally unimportant that instead of being imposed by the Terminal Association as was once the case it is now being added by the proprietary railroads to their freight rates. In either case it is not a terminal switching charge, but is a transportation charge as to which the two cities are not upon a parity. The combination of terminal facilities at St. Louis can not lawfully operate or be operated as carrying railroads. The record before the Supreme Court showed clearly that when the testimony was taken the special charge was not being made as a separate, distinct item, but was added to and included in the freight rate within the 100-mile area. Mr. Perkins testified that it was still there. I think the Supreme Court was dealing with the situation so disclosed and with substance, not form. Whether imposed by the Terminal Association as an agency or by the proprietary railroads as principals the arbitrary was equally objectionable as a transporta-

> tion charge and worked a burden on the commerce of St. Louis. I repeat here the direction of the Supreme Court: "the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of the traffic originating within the so-called 100-mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area." In applying this, effect must be given to the phrase "equally and in like manner."

There was no arbitrary charged *outside* the 100-mile zone when the opinion herein was delivered. There was an arbitrary charge *inside* the 100-mile zone when the opinion was delivered. This court in its opinion condemns the arbitrary *then* existing, to-wit: The arbitrary *within* the 100-mile zone as an *illegal discrimination* against *St. Louis, Mo., commerce.*

The court then says (224 U. S., 409–410):

> We come now to the remedy. * * * The Government has urged a dissolution of the combination between the Terminal Company, the Merchants Bridge Terminal Company, and the Wiggins Ferry Company. *That remedy may be necessary unless one equally adequate can be applied.*
>
> But the *illegal restraint* upon commerce among the States which we here find to exist consists in the possession acquired by the proprietary companies *through the means and with the object we have* stated of dominating commerce among the States carried

> on by other railroads entering or seeking to enter the city of St. Louis and by which such railroads are compelled either to desist from carrying on interstate commerce or to do so upon the terms imposed by the proprietary companies. This control and possession constitute such a grip upon the commerce of St. Louis and commerce which must cross the river there whether coming from the east or west as to *be both an illegal restraint and an attempt to monopolize.* (Italics ours.)

The court in this paragraph of the opinion declares the "illegal restraint upon commerce" which it finds to exist consists in the acquisition, ownership, possession, and operation as one company of the terminal properties of the three formerly independent corporations, to wit: The Merchants Bridge Terminal Railway Company, the Wiggins Ferry Company, and the Terminal Railroad Association of St. Louis, with the object, purpose, and result *of a complete domination of commerce carried on by other railroads at St. Louis* and compelling by the *ownership and method of operation and use of these terminal properties* all other railroads and lines entering the city of St. Louis or seeking to enter it to *desist* from carrying on interstate commerce or to do so *upon the terms imposed by the proprietary companies.*

This power of control so acquired was, the court held, an *illegal restraint of trade* and an attempt to *monopolize*. As an evidence of the danger to the

public of this power arising from control of combined Terminal properties by *excluding competing* railroads from St. Louis, Missouri, the court said (224 U. S., 410):

> The power resulting from the combination even before completed by the acquisition of the Wiggins Ferry Company and its related terminals was exhibited when the Rock Island sought an independent entrance.

The Rock Island, it will be remembered, as the record shows, sought to buy the Wiggins Ferry Company to secure an independent entrance to the city, and a contest for control between it and the defendant proprietary lines by purchase of the Wiggins Company stock in the open market resulted in a spectacular rise from $250 to $1,500 per share overnight of Wiggins Company stock with the usual result that the Rock Island and the then defendant proprietary lines got together and pooled their interests and the Rock Island was admitted to membership in the Terminal Company and the Wiggins property transferred to the Terminal Railroad Association of St. Louis and the last vestige of competition of the monopoly control of railroad egress and ingress to and from St. Louis was closed.

This court, continuing, said, relative to the exercise of this monopoly power of control of St. Louis traffic (224 U. S., 410):

> Some of its abuses are shown by the imposition of *the arbitrary* hauling charge imposed upon the artificially limited trade dis-

> tricts described. It is shown also by the maintenance of the system of billing traffic destined to cross the river at St. Louis, either east or west, or to St. Louis if from points on the east side of the river a practice so galling and universal as to practically "eliminate St. Louis from the railroad map" to quote the graphic, if extravagant language of counsel for the United States as respects the great traffic subject to the regulations. [Italics ours.]

In this paragraph the court squarely states that the "arbitrary" hauling charge imposed upon the artificially limited trade district (meaning the one hundred mile territory) is an *illegal abuse of* the power of the defendant proprietary lines over St. Louis *interstate* commerce. This abuse of power is cited by the court as one *of the results of the illegal restraint* of St. Louis commerce which the defendant proprietary lines exercise by reason of their ownership and operation of the properties of the then combined Terminal companies. It is one of the abuses the court sought to remove.

Continuing the court said (pp. 410–412):

> * * * Plainly the combination which has occurred would not be an illegal restraint under the terms of the statute if it were what is claimed for it, a proper terminal association acting as the impartial agent of every line which is under compulsion to use its instrumentalities. If, as we have pointed out, *the violation of the statute*, in view of *the inherent physical* conditions, grows *out of ad-*

ministrative conditions which may be eliminated and the obvious advantages of unification preserved, such a modification of the agreement between the Terminal Company and the proprietary companies as shall constitute the former the *bona fide* agent and servant of every railroad line which shall use its facilities, and an inhibition of *certain methods of administration* to which we have referred, will amply vindicate the wise purpose of the statute, and will preserve to the public a system of great public advantage.

These considerations lead to a reversal of the decree dismissing the bill. This is accordingly adjudged and the case is remanded to the district court, with directions that a decree be there entered directing the *parties to submit to the court, within 90 days after receipt of mandate, a plan for the reorganization* of the contract between the 14 defendant railroad companies and the *Terminal Company, which we have pointed out as bringing the combination within the inhibition of the statute.*

* * * * *

Fourth. By providing for the complete *abolition of the existing practice of billing* to East St. Louis or other junction points and then *rebilling* traffic destined to St. Louis or to points beyond.

Fifth. By providing for *the abolition of any special or so-called arbitrary charge for the use of the terminal* facilities in respect of traffic originating within the *so-called 100-mile area, that is not equally* and in like

> manner applied in respect of all other traffic of a like character originating outside of that area. [Italics ours.]

The foregoing extracts from the court's opinion and the orders of the court show clearly that the court held that the combination of the three companies, Wiggins, Merchants, and Terminal Railroad Association of St. Louis, gave a monopoly control of St. Louis commerce by reason of the extent of the facilities of the three combined companies and the existing topographical condition at St. Louis, and that the operation of these three properties as *a transportation company* and *a railroad common carrier was illegal*, and that the defendant proprietary roads *had illegally* combined *these properties and operated them as a common carrier, and compelled by such operation* all other roads desiring to carry on commerce at St. Louis, Mo., to desist from so doing or to carry on said commerce on the terms imposed by the defendants. The court also, in the above quoted paragraph from the opinion, sets forth as an evil result arising from the possession and use of this monopoly power by defendants the *discrimination* against and injury to St. Louis commerce caused by the *imposition of the* "arbitrary" charge. The court calls this imposition of the "arbitrary" *charge an illegal abuse of power, saying* (224 U. S., 410):

> Some of its abuses are shown by the imposition of the arbitrary hauling charges imposed upon the artificially limited trade districts described.

In the above-quoted extracts from the opinion this court directs attention to the illegal practice of defendants of billing St. Louis traffic to East St. Louis, Ill., and then rebilling same, as proof of the fact that the Terminal Company was used by defendants as a transportation company.

The opinion then points out that the three combined terminal companies might be legally operated by defendants if operated *as a terminal company only*, and not otherwise. Then this court proceeds to say that if the operative methods are changed so as to eliminate the monopoly element and the terminal properties opened on like terms to all roads as *terminal properties only* and the abuses and evils resulting from *the methods* of using the properties *heretofore by defendants are eliminated* the combination of the three terminal companies under a common ownership might be allowed to continue. Now, what were the changes this court required to be wrought that would authorize the continued existence of the common ownership and control of the three combined terminal properties by the defendants? First, that the combination of terminals be used as a *terminal association for the exchange* of traffic between main line carriers and as the *impartial agent of all*, and *not used as a transportation company.*

The agreement of the defendants required unanimous consent before new members could be admitted and all members contracted forever to use the terminal properties only for all traffic.

This court said therefore all agreements and contracts between the defendants whereby commerce was restrained and other roads compelled to carry on commerce at St. Louis on terms made by defendants or desist therefrom must be removed and the three terminal properties *must be opened up to use of every road upon the same terms and conditions,* and with the same burdens and benefits as the defendants have. To accomplish this object the court made orders numbered one and two as follows (224 U. S., 411):

> 1. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.
>
> 2. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

To remove the contractual restraint on trans-river commerce at St. Louis, Mo., whereby all road members of the Terminal Association were forever

bound by agreement among themselves to use for transriver traffic flowing through the St. Louis gateway the combined terminal properties of defendants, this court made order No. 3 as follows (224 U. S., 411):

> 3. By eliminating from the present agreement between the Terminal Company and the proprietary company any provision which restricts any such company to the use of the facilities of the Terminal Company.

Now, with these orders complied with so that all roads on equal terms could use the *property, there yet remained two other conditions that must be fulfilled as conditions precedent to continued existing control and ownership of the combined terminal properties by defendants:* First, the practice of *billing St. Louis traffic* to East St. Louis, Ill., and then *rebilling* the same must be eliminated. This was *the method* of operation of the properties by the defendant companies whereby they collected *revenue* as a *transportation* company upon St. Louis traffic for the haul over terminal properties between the termini of the defendant roads on the western and eastern banks of the Mississippi River. The opinion provides for removal of this illegal practice by order No. 4 (224 U. S., 411):

> 4. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

The remaining abuse to be remedied was the "arbitrary" charge which discriminated against St. Louis commerce. On the traffic within what territory was this arbitrary illegally imposed at the time the opinion was delivered? This court answers the question in the following language: "Some of its abuses are shown by the imposition of the arbitrary hauling charge imposed upon the artificially limited trade districts described." This 'artificially limited trade district" to which the court refers is the 100-mile territory. This court then wished to make an order which would, if complied with, eliminate the discrimination against St. Louis commerce caused by the imposition of the "arbitrary" then in existence, to wit: The arbitrary charged upon traffic within the 100-mile territory, and to accomplish this object and remove this "arbitrary" within the 100-mile territory, the court made order No. 5, which is as follows (224 U. S., 411–412):

> 5. By providing for the abolition of any special or so-called arbitrary charge for use of the terminal facilities in respect of traffic originating within the so-called 100-mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

The arbitrary had been abolished by the defendants outside the 100-mile zone, and the court by this order intended to do by its decree for the territory within said 100-mile zone *exactly what* the *defend-*

ants themselves had done for the territory outside said 100-mile zone, to wit: Remove the arbitrary *and thereby* remove the discrimination against *St. Louis commerce.* If defendants comply with this order the discrimination in this respect against St. Louis commerce will be eliminated.

When defendants made an arbitrary charge on all of St. Louis commerce before beginning of this action the charge was illegal. The arbitrary charge within the 100-mile zone now made is illegal. So long as defendants jointly own and operate the three combined terminal properties any arbitrary charge, whether levied on St. Louis commerce within or without the present 100-mile zone, will be illegal under the opinion of this court herein.

It has been suggested that the above paragraph number five of this court's order is susceptible of the construction that the " arbitrary " charge is only illegal because solely applied to a limited territory, to wit: The 100-mile territory, and that if the " arbitrary " was charged upon all St. Louis traffic, no matter whether it originated in the 100-mile territory or not, that the " arbitrary " charge would be legal under the opinion of the court in this case. This construction leads to the result that if defendants put the arbitrary on all St. Louis traffic without regard *to origin or destination it would be legal.*

Let us examine this proposition and see if it is sound. Why does the court say the " arbitrary " within the 100-mile zone is illegal?

Because such arbitrary charge discriminates against and is injurious to St. Louis commerce and

can only be made as a result of the use by defendants *of the three* combined terminal properties as a *transportation* company, and if the defendants use the combined terminal properties as a transportation company they are violating the *provision of the Sherman law* against consolidation of competing interstate railways.

To say that the opinion of the court meant arbitrary would be legal if charged on all St. Louis traffic is to state that the court decided the defendants' operation of the terminal properties was a monopoly which resulted in illegal discrimination against St. Louis commerce and that *defendants could avoid the penalty therefor* of corporate dissolution, and could evade immediately this court's order No. 5 by placing the "arbitrary" *on all traffic and not confining it to the traffic within the 100-mile zone.* This construction of the opinion is, of course, erroneous.

But so far as settling the question of the character and kind of decree that should be entered to carry out the fifth paragraph of this court's order is concerned, it is wholly unnecessary to discuss the question as to whether or not defendants could evade the order of the court by removing the territorial limit within which the "arbitrary" is charged and adding it on to all St. Louis, Mo., traffic. Because the record does not show *that it has* been added on to all St. Louis, Mo., traffic, but *is confined* to St. Louis, Mo., commerce arising in or

destined to the 100-mile territory. We deal only with the facts as they are shown by the record in this case, *and must in the formation of a decree apply the opinion of the court to the facts in the record.*

It is aside from the question at issue to discuss what would be the legal effect now, if defendants placed the "arbitrary" on *all St. Louis, Mo.,* traffic. The arbitrary was on all St. Louis *traffic* before the *100-mile zone was created.* If it was legal and not a discrimination against St. Louis *commerce why did defendants abolish it?*

The "arbitrary" charge was a discrimination against St. Louis traffic when it was imposed on *all traffic* of St. Louis without regard to *origin* or *destination* and was levied upon *all* traffic *before creation* of 100-mile zone because of the same *exercise of illegal monopoly* power that *now* enables the defendants to levy illegally this "arbitrary" charge on St. Louis traffic within 100-mile zone. When the defendants, on demand of citizens of St. Louis, limited the territory in which the "arbitrary" should be charged defendants did not *change the illegal character* of the "arbitrary" charge, but only *lessened the territory* within which they *would make this illegal charge.* The "arbitrary" was the result of the possession and exercise by defendants of illegal *monopoly power and restraint upon St. Louis commerce* when it was levied on all St. Louis traffic. It was illegal then and *is illegal now.*

What was done by defendants at the time the 100-

mile zone was created that would purge the ownership, control, and operation of the three combined terminal companies of the monopoly features and the evil results arising therefrom found to exist by the court—which would under the opinion of the court legalize the existing ownership and operation of the three terminal companies and remove the injury to St. Louis commerce the court's orders required removed? After the beginning of this suit and at the same time the citizens of St. Louis, Mo., demanded the abolition of the "arbitrary" and it was abolished by defendants beyond the 100-mile zone, the citizens demanded a St. Louis through bill of lading to remove the former practice of billing to East St. Louis, Ill., and there rebilling same traffic, and the defendants acceded to this demand and afterwards and now issue a through St. Louis bill of lading on St. Louis traffic: *but the "arbitrary" charge was added to the through freight rate on traffic originating in the 100-mile zone and destined to St. Louis, Mo., and on traffic originating in St. Louis, Mo., and destined to points within the 100-mile zone.* This having been done, the claim is made that this is not an "arbitrary," but is merely an additional charge for the haul from East St. Louis, Ill., to St. Louis, Mo. But this did not abolish the "arbitrary," except on St. Louis traffic *outside* of an irregular shaped zone extending from St. Louis, Mo., varying distances ranging from 100 to 200 miles, roughly speaking, and so arranged as to leave *within said zone* and subject still

to the "*arbitrary*" charge, the *coal mines furnishing an annual* tonnage to the defendants of between eight and nine millions of tons of soft coal on which defendants collected an arbitrary charge of 20 cents per ton for the haul over the combined terminal properties in addition to the regular freight rate.

But will adding the "arbitrary" to the freight rate on traffic within the 100-mile zone legalize the "arbitrary" charge? What is the service performed for which the "arbitrary" charge is added to the through freight rate? The answer of defendants and the fact is that the "arbitrary" charge thus added to the through freight rate is made for the haul between *the termini of the defendants'* roads on either side of the Mississippi River over and upon the *properties of the three combined* terminal companies operated by the defendants, to wit: The Wiggins, the Merchants, and the Terminal Railroad Association of St. Louis, Mo. *This is not a switching* charge, because no switching charge can be made until a *final delivery under a bill of lading* has been made and the through St. Louis bill of lading requires a delivery in St. Louis, Mo., on traffic having St. Louis as a final destination, *because through bills of lading* on said traffic are now *issued*. Therefore the "arbitrary" charge thus added to the freight rate is for a service performed by the three *combined* terminal companies acting as a *transportation* company, and it is immaterial whether the "combined terminal" companies under the name of the Terminal Rail-

road Association make the *charge* or whether *the defendant proprietary companies make it* by adding it to the through freight rate. It is in either case *a charge* made for *the haul* as by a *transportation company* between termini of *defendants'* roads on *either bank of the Mississippi River* and is made because the *defendants are using the three combined terminal properties as a transportation company and not* as a terminal company for the interchange of traffic only. This use of the combined terminal properties as a transportation company is *illegal, the opinion of the court says, because it would be a combination of competing interstate railways.*

So long as defendant proprietary roads jointly own and operate the Wiggins Ferry Company, the Merchants Bridge Terminal Railway Company, and the Terminal Railroad Association of St. Louis, the defendant proprietary roads must treat St. Louis, Mo., East St. Louis, Illinois, Venice, Granite City, and Madison, Ill., as one common center and apply one and the same rate to all the above-named cities.

This court did not hold that the arbitrary charge was illegal solely because it was charged only on St. Louis traffic within the 100-mile zone, but it held that the arbitrary was a discrimination against St. Louis commerce no matter whether it was imposed only on traffic within the 100-mile zone or traffic without the 100-mile zone, because the charge was the result of the exercise of monopoly power arising from the combination of the three terminal companies and using said three companies as a trans-

portation company. St. Louis commerce is not discriminated against *outside* the 100-mile zone *because the rate* is the same to *both* sides of the river. Bridges and ferries and tracks are used as *terminal properties of the proprietary lines for traffic without* the 100-mile zone. Now, supposing the arbitrary was attempted to be put on the traffic outside of the 100-mile zone; could it be done legally? The order of the Supreme Court was:

> 4. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and then rebilling traffic destined to St. Louis, or to points beyond.

The above portion of the order of this court and the reason for making it is clearly explained by a reference to that part of the opinion which condemns in the following language the operation of these terminal properties as a railroad carrier and declares that the combination of the Terminal Association of St. Louis, and the Merchants Company and the Wiggins Ferry Company is an illegal combination of *parallel and competing railroads* if the three combined companies are operated as a railroad carrier between the western and eastern termini of the defendant proprietary companies (224 U. S., 406–410):

> There are certain practices of this Terminal Company which operate to the disadvantage of the commerce which must cross the river at St. Louis, and of non-proprie-

tary railroad lines compelled to use its facilities. One of them grows out of the fact that the Terminal Company is a terminal company and something more. It does not confine itself to supplying and operating mere facilities for the interchange of traffic between railroads and to assistance in the collecting and distributing of traffic for the carrier companies. It, as well as several of the absorbed terminal companies, were organized under ordinary railroad charters. If the combination which has occurred is to escape condemnation as a combination of parallel and competing railroad companies, it is because of the essential difference between railroad and terminal companies proper—differences pointed out by the Missouri Supreme Court in the case heretofore referred to. Indeed, the defense to this proceeding is based upon the insistence that the Terminal Company is solely engaged in operating terminal facilities, defined in the briefs, "as mechanical devices for the exchange, receipt, and distribution of traffic." This Terminal Company, in addition to its schedule for terminal charges proper, such as switching, warehousing, etc., files its rate sheets for the transportation of every class of merchandise from the termini of the railroads on the Illinois side of the river to destinations across the river over its lines. These rates are applied to all traffic destined to cross the river, with certain exceptions to which we shall later refer, which originates within an irregular area of which St. Louis

is the center, and having a diameter from one to two hundred miles. This arbitrarily operates to cast a burden upon short hauls, which has led to much complaint, as being both discriminatory and extortionate. An exception is made as to traffic originating within so much of this area as constitutes what is called "Green Line territory," or which is destined to points within "Green Line territory." This seems to be based upon competitive conditions caused by the great toll railway bridge at Memphis, Tenn., the bridge toll being treated by lines using the bridge as a part of the through rate.

Another exception to the rule imposing this arbitrary is that it does not apply to traffic which originates in East St. Louis, whether it is destined to cross the river or not. The reason for this exemption, where such traffic does cross the river, is not apparent. Possibly it may be said that it is because the traffic of St. Louis and East St. Louis should be treated as arising in the same commercial area. But this reason does not seem to apply to the traffic originating in St. Louis which is bound east, though that of East St. Louis is altogether free from this arbitrary charge. The effect of this arbitrary discrimination is obviously injurious to the commerce and manufacturers of St. Louis, and is among the chief causes of complaint against the Terminal Company. Mr. Perkins, to whom we have before referred as a capable and impartial expert, says of the consequence of this curious exception out of

the 100-mile area rule, that "the effect of these charges was, of course, to put the man doing business in St. Louis at a disadvantage to that extent with the man doing business at East St. Louis on his eastern business." Again he says, that the practical operation was to give East St. Louis a distinct advantage in the manufacturing lines. Another practice which marks this Terminal Company as a transportation company which interposed itself between railroads having their termini on opposite sides of the river, and between the city itself and the roads terminating on the east side of the river, is that all traffic destined to cross the river at St. Louis, whether bound east or west, or destined for the city if coming from the east, is billed only to East St. Louis, and there rebilled to destination.

The practice of rebilling and of making a distinct hauling charge is an evident survival of the methods which existed when the eastern lines had no termini in St. Louis. They then billed to East St. Louis and there turned the traffic over to one of the existing terminal companies, who made their own specific charges for the haul to places of delivery within the city. The practice has been continued after the reason for it has disappeared. The effect of this practice of rebilling at East St. Louis and of imposing this arbitrary upon traffic originating within 100 miles of the city, destined to cross the river, seems to have been also applied to the large

coal traffic between the Illinois coal mines, upon which the city is largely dependent.

* * * * * *

The Government has urged a dissolution of the combination between the Terminal Company, the Merchants' Bridge Terminal Company, and the Wiggins Ferry Company. That remedy may be necessary unless one equally adequate can be applied.

* * * * * *

The power resulting from the combination even before completed by the acquisition of the Wiggins Ferry Company and its related terminals was exhibited when the Rock Island sought an independent entrance.

Some of its abuses are shown by the imposition of the arbitrary hauling charge imposed upon the artificially limited trade districts described. It is shown also by the maintenance of the system of billing traffic destined to cross the river at St. Louis, either east or west, or to St. Louis, if from points on the east side of the river, a practice so galling and universal as to practically "eliminate St. Louis from the railroad map," to quote the graphic, if extravagant, language of counsel for the United States, as respects the great traffic subject to the regulation.

The two things condemned in the foregoing extract of the court's opinion are, first, the *arbitrary* or charge for the haul between termini of defendant roads; and, second, *the method* by which the arbitrary is *collected,* to wit: The practice of billing St.

Louis traffic to or from St. Louis, Mo., to East St. Louis, Ill., or other junction point and making a distinct charge for the haul to or from St. Louis, Mo., and the junction points. The court said that both must be stopped.

Now, to recur to the question, could the defendants legally put an arbitrary charge on traffic within and without the 100-mile zone under the opinion of the court? It it be said they could, I ask how it could be collected without violating the law as declared in this opinion of the court. The defendants can not collect as a *common carrier* for the haul between the western and eastern termini of the railroad, because such use of the terminal properties is condemned by the opinion herein as *a combination of parallel and competing railroads.* Then there is but one way in which it could be attempted to be collected, and that is by making rates to East St. Louis, Ill., or other junction point, and then for traffic to St. Louis add to the East St. Louis, Ill., or other junction point rate the amount of the *present arbitrary charge for the haul between East St. Louis, Ill.*, or other junction point, *and St. Louis, Mo.*, treating the tracks of the Terminal Association and its bridges, and the tracks of the Merchants Company and its bridges, and the tracks of the Wiggins Ferry Company and its ferries, as a part of the main line of each of the proprietary roads, and conceding thereby that the terminus of *each of the eastern proprietary roads is in St. Louis, Mo., and the western proprietary*

roads in East St. Louis, Ill. Now, under the opinion in this case, which *forbids* the operation of these properties *as a railroad* carrier, can the proprietary railroads, by making each on its freight bill as a railroad carrier for the proportion of its through service, an *independent* additional charge equal to the arbitrary charge now made on its freight bill for the haul over the combined terminal properties, make legal the use of the combined properties as a railroad carrier, which use the court condemns if the charge is made by the Terminal Railroad Association of St. Louis? To so hold is to say that this court decided that discrimination limited to St. Louis commerce within 100-mile territory was illegal, but if the discrimination was made against all St. Louis commerce it would be legal, and that the only thing illegal about the "arbitrary" charge was the *method* of collecting it; that it was only the name "arbitrary" the court condemned and not the discrimination against and injury to the commerce of St. Louis, Mo. Now, the Terminal Company is but a *holding* company, and all of its stock is owned by the proprietary roads. It is *controlled and operated* by the *proprietary roads.* The Terminal Company the Government charged and the defendants *admitted was but another* name for the 14 proprietary roads. This being so, can it be possible that this court would say that the same act, to-wit: A charge for use of the combined terminal properties as a railroad carrier, when made by the

proprietary roads singly by adding the arbitrary charge to the through rate, is legal, and when charged by the joint action of the 14 roads acting through the Terminal Company is illegal, when the result is the same in both instances, to-wit: Discrimination against and injury to the commerce of St. Louis, Mo.? *This court did not so decide and it is not true that changing the name* of the charge so made from "arbitrary" to *part of* a through rate would legalize it.

But the court in its opinion answered the question as to whether or not if the form of collecting it and the name was changed it would approve the collection of the "arbitrary," in the following language (224 U. S., 408):

> The practice of *rebilling* and of making *a distinct hauling charge* is an evident survival of the methods which existed when the *eastern lines had no termini in St. Louis.* They then billed to East St. Louis and then turned the traffic over to one of the existing terminal companies who made their *own specific charges for the haul to places of delivery* within the city. The *practice* has been continued after *the reason for it has disappeared.* (Italics ours.)

The *reason* for the charge which *disappeared* was the *independent ownership and operation* of the bridges and ferries. The consolidation of the three terminal properties eliminated the former independent ownership. When the defendants

acquired these bridges and ferries the tracks of these lines extended to both sides of the river and there was no independent ownership of the properties.

The record shows that, beginning after this suit was filed *and now* an " arbitrary " charge is made and collected by the individual proprietary lines *adding the amount* of the "arbitrary " charge to the rate to East St. Louis, Ill., on St. Louis, Mo., traffic. What is the practical legal effect of adding " the arbitrary " to the through freight rate as is now said to be done? Take the Pennsylvania and New York Central lines on business from New York City to St. Louis, Mo. No doubt these are competing lines of railway within the prohibition against combination contained in the Sherman Act as construed by this court. Now, take a shipment of the same class of goods over each route from New York City to St. Louis, Mo., and billed through to destination. It is hauled by each road over its own individually owned road and rails until it reaches the point where the Pennsylvania and the New York Central lines respectively form a *connection* with the *combined properties of* the Terminal, Merchants, and Wiggins Companies, jointly owned by the Pennsylvania and New York Central, and twelve allied lines, *and from this point of connection* both roads use one railroad property jointly owned, to wit: The tracks, bridges, *and ferries of the three combined terminal properties,* the Merchant Company, the Terminal Company,

and the Wiggins Company; and both the Pennsylvania and the New York Central now are using these combined properties not as *terminal properties,* but as a *part of their* through *rails from New York City to St. Louis, Mo.,* and not making a terminal charge for the haul from the points of their respective connections with the above-mentioned combined properties, but are making a *charge for the service rendered in the haul over the combined terminal properties, which charge is added to a through freight rate, and both the Pennsylvania and the New York Central in making the delivery in St. Louis, Mo.,* are using the tracks, bridges, and ferries of the combined terminal properties *as a railroad common carrier, and not as a terminal company.* Now, if the Pennsylvania and the New York Central can *combine* this ownership of tracks, bridges, and ferries *extending across* the Mississippi River and for several miles on each side and being competing roads use the said properties so combined, how far along the *route and rails toward New York from St. Louis, Mo.,* can the *combination of ownership and use extend* before it will violate the Sherman Act forbidding the consolidation of parallel and *competing lines of interstate railway?* Perhaps it may be suggested that it only extends to the right to combine terminal properties. But the answer to this suggestion is that *the opinion of this court says that the combined properties can not be used as a railroad common carrier,* but if the combination exists it can only be

as a *terminal company operated to facilitate the exchange of traffic* between different railroad carriers, and to escape condemnation as combination of parallel and competing roads, the combined properties must be used only as terminal facilities. The further answer to it is the defense of the defendants in this case *that the terminal properties were not used as a transportation company in the sense of a railroad common carrier, but were used only as terminal properties,* and no added charge to the through freight rate can be made for any *service until the final delivery* has been made under the bill of lading. The defendants can not operate the terminal properties both as a *common carrier and as terminal properties.*

Now, the use as above outlined would be a use as a railroad common carrier and not as a terminal company, and this court further says, " Indeed, the defense to this proceeding is based upon the insistence that the terminal company is solely engaged in operating terminal facilities." Can the properties be used individually by the proprietary roads to add to their revenue by adding the " arbitrary charge " to the through freight rate, and when charged with violating the law against combination in restraint of trade escape by saying we own these properties *only as terminal properties? It is not the mere existence of the tracks, bridges, and ferries and the fact that fourteen roads jointly own them that constitutes the violation* of the law of which the defendants were found *guilty,* but it *is the use to*

which the defendants put the properties so combined, and the defendants plead as an excuse to avoid dissolution that the properties were only for *terminal facilities and not for the control and exercise of monopoly power over commerce.* It was on *condition only* that the defendants *would cease operating the terminal company as a railroad carrier* that it was allowed to *continue* to exist.

But the court recognized the discrimination against St. Louis commerce as existing *before the abolition of the arbitrary outside of the one hundred mile zone* when it said (p. 408):

> The practice of rebilling and of making a distinct hauling charge is an evident survival of the methods which existed when the eastern lines had no termini in St. Louis. They then billed to East St. Louis, and there turned the traffic over to one of the existing terminal companies, who made their own specific charges for the haul to places of delivery within the city. The practice has been continued after the reason for it has disappeared.

The " arbitrary " charge was made on all traffic and there was no one hundred mile zone before this suit was filed.

If the arbitrary charge is made by the Terminal Railroad Association of St. Louis for the service rendered as a transportation company in transporting the St. Louis traffic moving under a through bill of lading between the termini of defendant proprietary roads on either bank of the

Mississippi River the charge is illegal because in rendering it and making a charge therefor the Terminal Railroad Association is acting as a transportation company. If the arbitrary charge is added to the through freight rate by individual road then the combined properties of the three terminal companies, the Wiggins, Merchants, and the Terminal Railroad Association of St. Louis are jointly used by the proprietary roads as a part of their through route and rails and the Sherman Law forbidding a consolidation of competing railroads is violated.

No charge can be made as a transportation company by the defendant proprietary roads for the transriver haul over the three combined terminal companies' properties so long as these tracks of the three terminal companies are jointly owned by the defendant proprietary roads.

The complainant's proposed decree.

First. The decree proposed by complainant to eliminate the arbitrary *within* the one hundred mile zone eliminates it in the *same manner that the defendant proprietary lines eliminated it outside the one hundred mile zone*, to wit: By making the cities and towns on either bank of the Mississippi River at St. Louis railway gateway *one commercial center with one common rate* to and from said cities.

The order asked entered by complainant to enforce order No. 5 of this court prevents the defendant proprietary roads from charging the "arbitrary" by directing the roads to treat the cities on

either bank of the *Mississippi River at St. Louis as one common commercial center.* The complainant asked the following be entered as a part of the decree to enforce the abolition of the arbitrary (Rec., 86-87):

> Fourth. It is ordered and decreed that the defendants herein, and any existing or future railroad company acquiring a joint ownership in or a right to use the terminal properties now held or hereafter acquired by the defendants, shall not make a special or so-called arbitrary charge (commonly known as " the arbitrary ") upon traffic destined to St. Louis, Mo., or points beyond or originating in St. Louis, Mo., or passing through St. Louis, Mo., or the St. Louis railway gateway to points beyond for the use of and transportation over the terminal properties and facilities the defendants now own or may hereafter acquire, between the termini of the proprietary railroads of said terminal association in St. Louis, Mo., East St. Louis, Granite City, Madison, Venice, and Brooklyn, Ill., nor between the termini of the proprietary railroads of said terminal association in the territory of the St. Louis railway gateway in the States of Missouri and Illinois.
>
> And it is ordered that in the transportation and handling of traffic by the defendants the cities and towns of St. Louis, Mo., East St. Louis, Ill., Madison, Granite City, Venice, and Brooklyn, Ill., and the territory in the St. Louis railway gateway shall be

treated by the defendants as to rates charged, service supplied, and facilities furnished as one common commercial and business center, and the cities and towns above named herein and the territory of the St. Louis railway gateway shall be, as to traffic, treated as the St. Louis business district, and one and the same rate for transportation of persons and property shall be charged to and from each of the above-named cities and towns and to the territory designated as the St. Louis railway gateway.

And it is ordered and adjudged that no different or greater rate be charged by defendants for traffic destined to St. Louis, Mo., than is charged for similar traffic destined to East St. Louis, Madison, Venice, Granite City, or Brooklyn, Ill., or any other point in the territory designated as the St. Louis Railway Gateway; and that no greater or different rate be charged for traffic destined to East St. Louis, Madison, Granite City, Venice, or Brooklyn, Ill., or any other point in the territory designated as the St. Louis railway gateway than is charged for similar traffic destined to St. Louis, Mo.; that no different rate be charged upon traffic originating in St. Louis, Mo., than is charged for similar traffic originating in East St. Louis, Venice, Granite City, Madison, or Brooklyn, Ill., or any other point in the territory known as the St. Louis Railway Gateway; that no different or greater rate be charged upon traffic originating in East St. Louis, Madison, Granite City, Venice, or Brooklyn, Ill.,

than is charged upon traffic originating in St. Louis, Mo.; it being intended by this decree to prevent discrimination in the handling of interstate commerce by defendant either in favor of or against St. Louis, Mo., East St. Louis, Madison, Granite City, Venice, and Brooklyn, Ill., or any other point in the territory now or hereafter designated as the St. Louis railway gateway.

Delivery shall be made at any point upon the said terminal tracks in any of abovenamed cities or towns to which traffic may be billed.

This kind of an entry will give force and vitality to the fifth paragraph of this court's orders and will abolish the arbitrary forever and no doubt can exist as to whether or not it is being obeyed. The decree as to the " arbitrary " as entered by the court below merely follows the language of this court.

The fact that the defendant roads claim they have complied with it and that it did not and was not intended to affect their right to charge the arbitrary, while the Government claims the defendants have ignored the order of the court and refused to comply with it, shows that the decree as finally entered should be more specific and definite and the rights and duties of the defendants should be so clearly defined as to leave no room for such a controversy as here exists, to wit: A dispute as to whether or not the " arbitrary " charge was abolished by the opinion and the order of this court.

For these reasons we ask the court to direct the

entry of a decree in the form asked for by complainant for the abolition of the arbitrary on St. Louis traffic.

IX.

Provisions of decrees for settling disputes between roads.

The decree as entered undertakes to provide a method for settling disputes between any company applying for joint ownership or use along the same line as proposed by complainants decree but the decree the Government asks is more specific in detail and leaves less room for controversy.

X.

Provisions of decree as entered providing for acquisition of joint ownership or right of joint use of terminal properties.

This part of the decree providing for other roads acquiring joint ownership or use of the terminal properties does not provide a form of contract and leaves many questions open for litigation. The form of decree proposed by the Government on these questions provides the same form of contract to be made between the applying and defendant proprietary companies as the proprietary companies themselves provided for the admission of new companies, eliminating of course the parts of old contracts found by the court to be illegal.

The contention of complainant is that the decree should as specifically and clearly as possible state the rights and duties of the roads to each other to the end that litigation between new roads seeking

entrance to the city and defendants might not result in loss to the public for long periods of time of the service of the new carrier.

The decree the Government asks will protect the rights of the defendants and the public and will leave free the Interstate Commerce Commission to fix the freight rates, and control the movement of traffic, and we respectfully submit the Government is entitled to the relief asked.

EDWARD C. CROW,
Special Assistant to the Attorney General.
OCTOBER, 1914.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.

THE UNITED STATES OF AMERICA,
Appellant,

v.

THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS *et al.*
Appellees.

No. 452.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

BRIEF FOR APPELLEES.

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Rand Briggs Ptg. & Pub. Co., St. Louis, Mo. Tel., Central 2614; Bell, Olive 1026.

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STATEMENT.

This suit was brought in 1905 (reported in 224 U. S. 383), under the Sherman Act, against the Terminal Railroad Association of St. Louis, the St. Louis Merchants Bridge Terminal Railway Company and the Wiggins Ferry Company, to dissolve their unity of control and operation. Fourteen trunk railroads were made parties defendant, because they owned all of the issued shares of the stock of the Terminal Association, and thirteen of them owned all of the shares of the

stock of the Wiggins Ferry Company. Individuals, in whose names shares of the stock of the Terminal Association stood as representatives of the several railway companies, were made defendants. The Central Trust Company of New York, to whom was made, on December 16, 1902, a mortgage to secure an issue of bonds by the Terminal Association, was also joined as a defendant, but the bill was voluntarily dismissed as to it.

The essence of the charge is that the three companies, viz.: the Terminal Railroad Association of St. Louis, the St. Louis Merchants Bridge Terminal Railway Company and the Wiggins Ferry Company, each having a system of terminals in St. Louis and East St. Louis, the two former having bridges across the Mississippi River and the latter a ferry, were competitors with each other, and for the purpose of stifling competition between themselves and the railroads and creating a monopoly, they were brought under a single control.

The essence of the answer, while admitting that the three terminal systems in 1902 were brought together under the control of the railway companies, is that **each of the three systems was incomplete in itself** (see evidence of Perkins, Rec., p. 2601; Sands, Rec., p. 145-164; Penny, Rec., p. 2538-2539; see also Point II. of opinion of Supreme Court of Missouri in case of Attorney General v. Terminal Association, defendant's abstract of record, p. 173), and they were brought into co-operation in order that the terminal functions, to which end they were organized and operated, might be more efficiently and economically performed. Upon this issue this court sustained the defense, saying:

> "It cannot be controverted that, in ordinary circumstances, a number of independent companies might combine for the purpose of controlling or acquiring terminals for their common but exclusive use. In such cases other companies might be

admitted upon terms or excluded altogether. If such terms were too onerous, there would ordinarily remain the right and power to construct their own terminals."

The more than "ordinary circumstances" which this court found to take this case from the general rule above announced were in the physical and topographical conditions of St. Louis.

We had contended that by the unification of all the terminals at St. Louis all railroads centering there from the different points of the compass were given common access to all traffic in and out of St. Louis and trade was thereby promoted. We further advanced the fact and argument that the topographical conditions of the territory limited the space for terminals at any reasonable expense, and hence made the unification of terminals which would serve alike all railroad companies imperative.

This fact and argument was vigorously combatted by the Government. It contended there was ample room left for expansion of terminals and for new terminals. (See cross-examination of Perkins, Vol. IV.)

The Government, neither by pleading nor proof, rested upon the special circumstances of topography.

Basing its judgment upon exceptional circumstances of topography ("inherent local conditions"), the court found ground for criticism in the control and management, the **first** of which is: **That the terminals "are not under a common control and ownership."**

This observation is predicated upon an agreement made between the Terminal Railroad Association, shortly after it was organized, and the six railroad companies mentioned in that agreement. The agreement is dated Oct. 1st, 1889. It contained a grant to each of the railroad companies parties to it, their successors and assigns, of the right to joint use with each other, and with

such other companies as might be admitted as proprietary lines, of all of the terminal properties the first party then held, or might thereafter acquire, in St. Louis and East St. Louis, it being understood that the right granted to each proprietary company should not be transferable, but remain as an appurtenance to the railroad then owned by the several proprietary companies.

We print that contract as an appendix to this brief. The observation of the court was directed to paragraphs III and XIX of that agreement, which are as follows:

> "III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and **hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control** through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided."

> "XIX. This agreement may be executed in counterparts, and any railroad company not named as second party hereto, may be admitted to joint use of said terminal system on **unanimous consent,** but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof thereby indicating its right and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto."

The obnoxious provisions of said two paragraphs we have emphasized.

Other railroads were from time to time subsequent to that date admitted as proprietary lines, under the terms of that agreement. Quite a number were admitted to membership at the time (in 1902) thirteen of the railroad companies, one of which was not a party to this

agreement, purchased the shares of stock of the Wiggins Ferry Company. Those admitted at that time were:

The Chicago and Alton Railroad Company,
Chicago, Burlington and Quincy Railroad Company,
The Chicago, Rock Island and Pacific Railway Company,
Illinois Central Railroad Company,
Missouri, Kansas and Texas Railway Company, and
Southern Railway Company.

The criticism of paragraph III above quoted is that it obliged all of the proprietary lines to make use of the bridge and terminal properties of the Terminal Association for all passenger and freight traffic within their respective control.

The criticism of paragraph XIX of the agreement quoted above is that it required the unanimous consent of the proprietary companies for the admission of a new company to the use of the terminal privileges.

These criticisms are more theoretical than practical. The practice has always been not only to admit all applicants to membership but to solicit them to become members or shareholders of the Terminal Railroad Association.

Mr. Ramsey, a witness for the complainant, who for years was President and Manager of the Terminal Association, testified that all the terminals in St. Louis were open to any road, non-members as well as members of the Terminal Association, on exactly the same terms and conditions as to rates and usages; that the owner of the stock of the Terminal Association had no advantage over the non-proprietary company, but was placed at a disadvantage by reason of the obligation of guaranty which such stockholder assumed for a deficiency in operating expenses of the terminals, while the non-mem-

ber had no such obligation, but still had the use of all the facilities on the same terms; that all railroads terminating in East St. Louis, as well as those terminating in St. Louis, are members of the Terminal Association, except the Chicago, Peoria and St. Louis and the Clover Leaf Companies; that the business of the two latter roads was handled on exactly the same terms and conditions as that of the proprietary lines, and an invitation had been extended to them to become members.

Because of the fact that this agreement only came into the case incidentally and not as a direct issue, we did not debate in our brief whether one partner to an enterprise of mutual benefit, involving a large investment of money, the value of which depends entirely upon its use, might not legally insist upon the others discharging their full share of duty in the maintenance of the enterprise, as required by paragraph III of the agreement *supra*. The restraint of trade in such case would be merely incidental.

Another supposed practice which this court condemned is this: **That the Terminal Association charged its published tariff rates for the use of its terminals for all traffic originating within a zone of one to two hundred miles east of East St. Louis and destined to St. Louis, but did not apply the same rate to a like class of traffic originating beyond that zone.**

This is a misapprehension of fact on the part of the court. It is not difficult to understand why the court was misled in this respect. The record in this case is very voluminous and discursive. There were four volumes of record containing nearly three thousand pages, four volumes of exhibits containing nearly three thousand pages, and a ninth volume containing about two hundred and fifty pages, making in all nearly seven thousand printed pages of record. Several volumes of exhibits contain proceedings of traffic associa-

tions, such as the Central Car Service Association, Belleville and St. Louis Traffic Bureau, Central Freight Association, Chicago and Ohio River Committee, Coal Traffic Bureau, St. Louis Cincinnati and Louisville Freight Committee, St. Louis Traffic Association, St. Louis Eastbound Freight Company, and Southern Freight Association, which have no relevancy to the issue here—they deal almost exclusively with railroad rate making.

Frequent reference is made in the testimony and in briefs of counsel to a charge that is called the "arbitrary," or "bridge arbitrary," or "terminal arbitrary." These terms were not defined in the record.

No issue was made in the pleadings as to the impropriety of rates established by the proprietary companies in the operation of their respective lines; or as to the reasonableness of the rates for terminal services.

The Terminal Association published in the manner required by law its schedule of traffic charges, and after 1902, when the unification of the terminals was in fact completed, there was no abatement by the Terminal Association in this schedule of rates, which at all times were only sufficient to meet the operating expenses, betterments and extensions of the terminal system.

We understand the truth concerning this matter to be this: That within a certain area the railroad companies, whether proprietary or non-proprietary, make a rate which is plus the tariff sheet charge of the Terminal Railroad Association; within another area, beyond that of the first in mileage, a rate is made which is plus only a part of the terminal tariff; and within an extensive area outside of the last the railroads make a rate which is minus the terminal charge. This is what is called an absorption of terminal charges in the through railroad rate. In the first area the railroads cannot afford to absorb any part of the terminal charge because of the

smallness of the compensation which comes to them in the initial carriage. Within the next area they can afford to absorb a part of the terminal charge because of the greater amount of compensation received. Within the third area they can afford to absorb all of the terminal charge because of the increased compensation which they receive owing to the increased mileage. This is in no sense **an arbitrary** of the Terminal Association and in no sense **peculiarly applicable** to railroad rate making **as to St. Louis** traffic. It applies as well to New York, Philadelphia, Boston, Baltimore and Washington as to St. Louis, and is in fact a principle of rate making established by the railroads, and approved by the Interstate Commerce Commission.

Concerning the supposed discrimination in the charges for transferring coal across the river—and where the Government's quotation form Mr. Perkins' testimony stops just short of reflecting Mr. Perkins' testimony in full—we beg to quote the continuation of it from where the quotation of the Government left off. (Rec., pp. 2795-2798.) Mr. Perkins testified as follows:

> "Q. In what way did this extra charge and the freight conditions of St. Louis affect the manufacturing interests of St. Louis, and in what way, if any, did it give East St. Louis and the east side towns, the advantage of the city of St. Louis, Missouri, in the manufacturing line? A. Well, it meant that materials of various kinds from the east into East St. Louis, were transported for an amount by the bridge toll lower than to St. Louis. And, on the other hand, the shipments to points beyond the one hundred mile limit, if we call it that—that was a very rough boundary and sometimes went up to two hundred miles—but, at any rate, to points beyond that radius, on his output to the west, were just the same as from St. Louis. On the other hand, his eastern shipments were less by the bridge toll than from St. Louis.

Q. And the practical operation of that was to give East St. Louis a distinct advantage in the manufacturing line, wasn't it, its location there? A. So far as the rate basis went, yes.

Q. It is true that the great majority—a very large per cent of coal, which is very necessary to manufacturing and to the existence of a city, comes from east and north and south of East St. Louis, in the State of Illinois, to the City of St. Louis? A. Yes, sir.

Q. And on all of that a charge was made for crossing the river to St. Louis? A. Oh, yes; a charge was made for crossing the river. Coal rates are made up in a rather different way. Those local coal rates from the Illinois mines are governed by the Illinois State Distance Tariff, as a maximum, and of course, under that arrangement, as long as that were true, the rates to St. Louis would naturally be higher.

That situation, as long as you have asked about those rates, is one of the difficulties we had to work against in adjusting rates. It is understood, inside the one hundred mile limit that the Illinois Railroad Commission would never allow the same rates to apply to St. Louis as to East St. Louis, as they had those rates under their jurisdiction.

Q. The Illinois Railroad Commission had nothing to do with St. Louis, Missouri, did they? A. Yes, to this extent: they were interested in maintaining the one advantage held by East St. Louis—that is the way the general basis of rates was adjusted. The fact that the Illinois State Commission had that interest in maintaining the differential, and the fact that the local coal roads running into East St. Louis insisted on keeping out of any complications in and expense for crossing the State boundary (partly on account of the provision in the Hepburn Act), made it impossible, practically, to make any better readjustment of rates inside this one hundred mile limit.

Q. I beg your pardon, but I did not ask you anything about that. A. I thought you were asking

me about coal rates, and I thought I would explain it.

Q. I just asked you if it was added onto the coal rates, and you answered that. What has been the effect— A. I would like to say, for fear you may think I said that for a purpose, that it cuts no figure with the Terminal Railroad Association whether it is absorbed or not. That is, it does not affect the Terminal Railroad Association as such.

Q. I will ask you what has been the effect, as to driving manufacturers away from St. Louis, or preventing them locating in St. Louis, as to this condition you mention, with reference to the charge on goods consigned to St. Louis from east? A. Well, I should say, primarily, the development of St. Louis had been rather more as a jobbing center than as a manufacturing center, although we have some of the largest manufactories of their kind in the world in St. Louis. The car shops and breweries, and the shoe manufactories, etc.

But it had been claimed in the past that industries consuming a large amount of coal naturally located at East St. Louis, as against locating in St. Louis, and I presume to a certain extent that is quite natural and true.

I speak of the past. The adjustment of the coal rates is very different from what it was in 1903.

I have no doubt in the adjustment of 1903, or prior to that time, industries that consumed a very very large amount of coal, and where that was the main item of expense, or that used large quantities of heavy material, like pig iron, added to the fact that land was very cheap in East St. Louis, naturally located there, instead of coming to this side of the river.

Q. The result of it, in general, has been to upbuild these east side cities rather at the expense of St. Louis? A. Well, I don't know about that. As a citizen I am not sorry to see industries of that kind across the river. I think it is a good thing. That is, of the particular class I have mentioned, as long as there are plenty of facilities for free movement back and forth across the river.

I think we have had and are now having a pretty large development of the best class of manufactories for a residence city, on this side of the river.

That is not an opinion that I regard as for or against the arbitrary proposition.

Q. You said that this arbitrary charge applied on all except the Green line territory, and to that territory— A. Mississippi Valley territory south of the Ohio.

Q. That is true, south of the Ohio river and east of the Virginias and Carolinas and extending to the Gulf, and bounded on the west by the Mississippi river? A. At that time the Mississippi Valley was a distinct association.

Q. Define what States that was in? A. Business running down to New Orleans, Vicksburg and that territory.

Q. What were the boundaries? The Ohio river on the north? A. Yes, sir.

Q. Carolinas and Virginias on the east? A. It practically embraced that whole territory.

Q. And ran around by Georgia? A. That is, Green line territory you are now speaking of? Yes.

Q. It was also absorbed, was it, on territory through to the coast, which you call the Mississippi Valley territory, taking in New Orleans and Georgia? A. That takes in all that territory to New Orleans, by way of the Mississippi river."

We do not understand the court has any power to establish rates, or the equivalent, fix standards by which the rates shall be established, nor that this court intended to enter upon any such inquiry in this case.

No evidence was presented that would enable the court to determine that this rule of rate making generally practiced by the railroads, with the approval of the Interstate Commerce Commission, was unreasonable.

We take it from the expressions of the court that it was of the impression that this discriminating charge as to certain areas was **arbitrarily** made **by the Terminal Association** in the abatement of its charges as between

the area without and that within the one or two hundred mile zone east of East St. Louis; whereas the truth is **no abatement was made in the terminal charges in respect of any traffic,** but on traffic within certain distances a part of the terminal charge was absorbed and paid for by the railroad company on whose line the traffic originated.

Again, this court seems to have been of the impression that an exception was also made in the application of the published tariff of the Terminal Association on traffic originating within what is called the "Green Line Territory," that is, southeastern territory, and was of the impression that this discriminatory charge on the part of the Terminal Association was caused by the toll railroad bridge at Memphis, Tennessee. This impression is a misapprehension of the real fact. The Green Line Territory is a territory in the south and southeast that is reached by railroad lines, some on the east side and some on the west side of the Mississippi River, and the same rate is made by the railroads on the west side of the river through St. Louis to East St. Louis as to St. Louis, and likewise by the lines on the east side of the river the same rate is made to St. Louis through East St. Louis as to East St. Louis. This is a rate made by the railroad companies in competition for the business in this territory which may be destined to either St. Louis or East St. Louis, and is precisely the situation dealt with by the Interstate Commerce Commission in Commercial Club of Omaha v. Railroads, 7 I. C. C. 386

(See also Perkins' Evidence, Rec., pp. 2799 *et seq.*)

From certain territory south of Omaha the same rates prevailed to Council Bluffs as to Omaha. The complainant contended that this should be the universal rule. In answering this contention, the Commission there said:

> "Shipments from the south into Omaha or Council Bluffs come over several systems of roads, some of

which reach these points from Nebraska and some from the Iowa side of the Missouri River. The Iowa roads, in order to do business in Omaha, in competition with Nebraska roads, must carry through Council Bluffs to Omaha at the Omaha rate of their competitors. The Nebraska roads in like manner and for like reason must carry to Council Bluffs—even if the traffic comes by way of Omaha—at the Council Bluffs rate of the Iowa roads. This situation virtually compels the same rate to both towns on traffic coming from the south. The carriers complained of are not responsible for this situation or chargeable with any resulting consequences to either community."

What was there said applies to the railroad—**not the terminal**—rates from the Green Line Territory, which is adverted to by this court in its opinion.

The **third** criticism is that the eastern trunk lines do not bill their traffic through to St. Louis. We assume that the court in this observation discriminated between a bill of lading and a waybill. A bill of lading is issued to the shipper; a waybill is a memorandum which accompanies the shipment in transit for the guidance of the employees in handling the traffic. There is no objection since 1902 to issuing bills of lading as the shipper may wish.

This court, after thus reviewing the case, crystalized its judgment into specific directions to the lower court, which are as follows:

> "That a decree be there entered directing the parties to submit to the court, within ninety days after receipt of mandate, a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company, which we have pointed out as bringing the combination within the inhibition of the statute.
>
> First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon

such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies.

Second. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms, and regulations as will, in respect of use, character and cost of service, place every such company upon as nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the Terminal Company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal Company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis, or other junction points, and then rebilling traffic destined to St. Louis, or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of other traffic of a like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint owner or user as herein provided for and the terminal or proprietary companies which shall arise after a final decree in this cause, may be submitted to the District Court, upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. To avoid any possible misapprehension, the decree should also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic

passing over its lines, or the establishing of joint through rates or routes over its lines or any other power conferred by law upon such Commission."

When the mandate was filed in the court below, the Government moved the then District Judge to enter an interlocutory order in accordance with the special directions of this court. From an out-of-hand impression, we then suggested that there might be some doubt as to whether the District Judge had jurisdiction to enter the interlocutory and final orders in the case. The motion was, however, pressed by the Government. The judge to whom this application was addressed declined to act, because he had been counsel for the Government, but called in his stead his Honor, Judge Trieber. We again suggested this question to his Honor, Judge Trieber, who seemed quite convinced that the District Judge had sole jurisdiction of the matter.

The hearing before Judge Trieber progressed to the point of having approved the plan submitted by the defendants and the draft of final decree, when the Government, dissatisfied with the action of the District Judge, applied to this court for a writ of prohibition, questioning the jurisdiction of the District Judge to act in the matter. This court decided that he was without jurisdiction and that the decrees should be considered and determined only by a court composed of Circuit Judges. That case is reported in 226 U. S. 420.

After this, the Government made a written application to the Circuit Judges for the entry of an interlocutory decree.

Pursuant to this motion and the mandate of this court, the Circuit Judges entered the following interlocutory decree:

"This cause came on to be heard at this term on the motion of the United States that an interlocutory decree be entered pursuant to the opinions of

the Supreme Court reported in 224 U. S., 382, 411, and 226 U. S., 420. The United States of America, complainant, heretofore appealed to the supreme Court of the United States from the final decree of this court dismissing this cause on June 8, 1910, and the Supreme Court of the United States at its October term, 1911, having heard the appeal upon a transcript of the record and having thereupon, on the 22nd day of April, 1912, ordered, adjudged, and decreed that the said decree of this court in this cause be reversed and that said cause be remanded to this court for further proceedings in accordance with the mandate of the Supreme Court in this cause bearing date May 23, 1912, which was recorded in this court on June 3, 1912, the Honorable Jacob Trieber, United States district judge, on June 11, 1912, entered an interlocutory decree pursuant to the mandate, but subsequently, on the petition for a writ of prohibition, the Supreme Court of the United States rendered a decision to the effect that he was without jurisdiction to render such decree and that this case should be considered and determined only by a court composed of Circuit Judges in accordance with the provisions of the expedition act, Chap. 544, 32 Stat. 823.

Now, therefore, in obedience to the mandate of the Supreme Court and in accordance with the opinions of that court, to which reference has been made, it is hereby ordered, adjudged, and decreed that the interlocutory decree hereinbefore rendered on June 11, 1912, by the Honorable Jacob Trieber, district judge, be, and the same is hereby, set aside and for naught held pursuant to the opinion of the Supreme Court; that within sixty days after the entry of this decree the Terminal Railroad Association of St. Louis and the fourteen railroad companies defendants herein, their successors and assigns, if any, and such other companies as may have become co-members with the fourteen defendant railroad companies, if any, shall submit to this court a plan, upon which the defendants herein shall have agreed, for the reorganization of the contracts, agreements,

arrangements, and leases, and the use and operation of the properties and terminal facilities of the defendants herein, between the Terminal Railroad Association of St. Louis, Missouri, and its fourteen co-defendant railroads, as aforesaid, as will make said contracts conform in all respects to the terms and conditions hereinafter mentioned.

First. By providing for the admission of any existing or future railroad to joint ownership and control of the combined terminal properties, upon such just and reasonable terms as shall place such applying company on a plane of equality in respect of benefit and burdens with the present proprietary companies.

Second. Such plan of reorganization must also provide definitely for the use of the terminal facilities by any other railroad not electing to become a joint owner, upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place every such company, as nearly on an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies.

Third. By eliminating from the present agreement between the Terminal company and the proprietary companies any provision which restricts any such company to the use of the facilities of the Terminal company.

Fourth. By providing for the complete abolition of the existing practice of billing to East St. Louis or other junction points and the rebilling traffic destined to St. Louis or to points beyond.

Fifth. By providing for the abolition of any special or so-called arbitrary charge **for the use of the terminal facilities** in respect of traffic originating in the so-called one hundred mile area that is no equally or in like manner applied in respect of all other traffic of like character originating outside of that area.

Sixth. By providing that any disagreement between any company applying to become a joint

owner or user as here in provided for and the Terminal or proprietary companies which shall arise after a final decree in this cause may be submitted to this court upon a petition filed in this cause, subject to review by appeal in the usual manner.

Seventh. It is further ordered, adjudged, and decreed that the said parties also present at the same time a proposed form of final decree in accordance with the directions of the Supreme Court in its mandate and opinion, which shall contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal company, or the mode of billing traffic passing over its lines, or the establishing of joint rates or routes over its lines, or any other power conferred by law upon such commission.

Eighth. Upon the failure of the parties defendant to come to an agreement within sixty days from the entry of this decree which is in substantial accord herewith, the court will, after hearing the parties to this cause, upon a plan for the dissolution of the combination between Terminal Company, the Wiggins Ferry Company, the Merchants' Bridge Company, and the several terminal companies related to the Ferry and Merchants' Bridge Company, make such order and decree for the complete disjoinder of the three systems as may be necessary, enjoining the defendants, singly or collectively, from any exercise of control or dominion over either of the said terminal systems or their related constituent companies, through lease, purchase, or stock control, and enjoining the defendants from voting any share in any of said companies or receiving dividends, directly or indirectly, or from any future combination of the said systems in evasion of such decree or any part thereof."

The defendants, in obedience to this decree, presented an executed plan of reorganization and a draft of final decree, conforming in all respects to the interlocutory decree.

No exceptions to this plan and decree were made by the Government. The Government, however, presented its plan of reorganization and draft of final decree, to be found at page 78 of the record.

The final decree, from which the Government has prosecuted this appeal, is as follows:

> "This cause came on to be heard at this term, and it appearing that the United States of America, complainant, heretofore appealed to the Supreme Court of the United States from the final decree of the Circuit Court of the United States in and for the Eastern Division of the Eastern Judicial District of Missouri, dismissing this cause on June 6, 1910; and the Supreme Court of the United States at its October term, 1911, having duly heard said appeal upon the transcript of the record, and having thereupon on the 22nd day of April, 1912, ordered, adjudged, and decreed that the said decree of the United States Circuit Court in and for the Eastern Division of the Eastern Judicial District of Missouri in this cause be, and the same is hereby, reversed, and that said cause is remanded to this court for further proceedings in accordance with the mandate of the Supreme Court of the United States in this cause, bearing date the twenty-third day of May, 1912.
>
> And afterwards, to-wit, it appearing that on the 16th day of June, 1913, a preliminary decree was entered in accordance with the mandate of the Supreme Court, now, therefore, it is ordered, adjudged and decreed by the court as follows:
>
> 1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the Anti-trust Act of July 2, 1890 (26 Stat., 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unification of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal

business, such as supplying and operating facilities for the interchange of traffic between railroads, and to assist in the collecting and distributing of traffic for the carrier companies—switching, storage, and the like—and modifying its contracts as herein specified.

An election having been made to continue the combination for terminal purposes the defendants are therefore perpetually enjoined from in anywise managing or conducting the said Terminal Railroad Association or any of its constituent companies, and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same, and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered.

2. The agreement of October 1, 1889, between the Terminal Railroad Association and various other defendants, known in the record as 'Exhibit A,' shall be reformed in the following manner:

(a.) The provision thereof reading as follows shall be eliminated:

'III. In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through to, and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided.'

(b.) The provision thereof reading as follows shall be eliminated:

'XVII. Neither party shall sell, assign, transfer, or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the board of directors of the first party.'

In lieu thereof the following may be inserted: 'No proprietary or using company shall sublet its

rights and privileges in the use of the terminal facilities to any other company or companies.'

(c.) The provision thereof reading as follows shall be eliminated:

XIX. This agreement may be executed in counterparts, and any railroad company not named as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof, thereby indicating its rights and duties in respect to use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto.'

In lieu thereof the following shall be inserted:

(1.) In case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal properties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(2.) Any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will, in respect of use, character, and cost of service, place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

(3.) Any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said terminal properties, and the owning proprietary

companies shall be submitted to the United States District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed, and the party so filing said petition shall at least fifteen (15) days before so doing, serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day. Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri, and shall be heard when called in its regular order on said docket, and the proceedings shall be subject to review by appeal as in any other cases. Upon being advised by the filing of a petition of such dispute or controversy the court may at once admit the applying company to ownership or use of the terminal facilities during the pendency of the proceeding upon the giving of security in amount and form as it may direct.

(d) All provisions of the purport or effect of those eliminated from the agreement of October 1, 1889, shall also be removed from all other contracts affecting the ownership or use of the terminal facilities to which the Terminal Railroad Association and the proprietary companies or any of them are parties. The benefits and burdens of the amended agreement shall inure to and rest upon all future proprietary and using railroad companies respectively.

3. Hereafter traffic destined to St. Louis, Missouri, or to points west of the Mississippi River and to be transported through the St. Louis gateway, or traffic from St. Louis, Missouri, destined to poiut east of said river, shall not be billed to East St. Louis, Illinois, or other junction points or termini of the railroads of any of the said railroad companies east of the river and then rebilled to destination, but for all such traffic each railroad company shall issue through bills of lading unless otherwise direct-

ed by the person controlling the same. The defendants are perpetually enjoined from violating the above provisions.

4. The defendants are perpetually enjoined from making any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area.

5. The provisions of this decree shall extend to and embrace all railroad companies how or hereafter admitted to joint ownership or use of the facilities of the Terminal Railroad Association and to all its facilities present and future acquired.

6. Nothing in this decree shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Railroad Association, or the mode of billing traffic passing over its lines, or the establishing of joint through rates or routes over its lines or any other power conferred by law upon such commission.

7. This cause is reserved for such further order and decrees as may be deemed necessary."

The Terminal Association has complied with all of the positive requirements of this final decree. It, however, moved to modify the following paragraphs of the decree, viz.:

"1. The Terminal Railroad Association of St. Louis is an unlawful combination contrary to the Anti-Trust Act of July 2, 1890, (26 Stat., 209), when it and the various bridge and terminal companies composing it are operated as railroad transportation companies. The combination may, however, exist and continue as a lawful unifaction of terminal facilities upon abandoning all operating methods and charges as and for railroad transportation and confining itself to the transaction of a terminal business such as supplying and operating facilities for

the interchange of traffic between railroads, and to assist in the collecting and distributing of traffic for the carrier companies—switching, storage and the like—and modifying its contracts as herein specified.

An election having been made to continue the combination for terminal purposes the defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of its constituent companies, and from operating any of the properties belonging to it or its constituents otherwise than as terminal facilities for the railroad companies using the same and from making charges otherwise than for and according to the nature of the services so lawfully authorized to be rendered."

upon the following grounds:

"First. For that, it appears that the defendant herein have conformed to the special directions contained in the Supreme Court's decree herein and the special directions of the interlocutory order of this court herein, pursuant to the mandate of the Supreme Court, and, having done so, the Terminal Association has ceased to be an unlawful combination, contrary to the Anti-Trust Act of July 2, 1890, as found by this court in the first paragraph of said Article 1.

Second. Because defendant, Terminal Railroad Association of St. Louis, is enjoined from making charges otherwise than for supplying and operating facilities for the interchange of traffic between railroads, and to assist in the collecting and distributing of traffic for the carrier companies, switching, storage and the like, and is required to abandon all operating methods and charges as and for railroad transportation;

For that, while the general scheme and purpose of the Terminal Association, and its subsidiary companies, is that of affording terminal advantages and facilities to railroad companies, yet, as an incident to that business, and on account of the necessary

extent of its tracks, covering an area of Seventy-five to one hundred square miles, it is frequently called upon to take traffic from one point on its line to another point on its line, completing the entire movement on its own tracks.

As an illustration: The Terminal Association operates in the early morning and late in the afternoon some trains to transport laborers engaged in industrial factories from Granite City, Illinois, to the different stations on its line in St. Louis, Missouri. This it is prohibited from doing under the decree.

Another illustration: Many factories are located upon the Terminal Association's tracks on both sides of the Mississippi River. Under this order the defendant, Terminal Association, would be restrained from accepting either raw material or finished products shipped from one such factory to another, though it could, with great convenience to the public, render such service.

These are incidents, but very important incidents to the principal business of the Terminal Association, and, we submit, were not in contemplation of the decree ordered by the Supreme Court."

ARGUMENT.

I.

The Mandate Required the Defendants to Submit a Plan of Reorganization, and the Government Was Not Included in the Designation of "Parties".

The interlocutory order of the Circuit Judges, sitting in the District Court, following the mandate of this court, required the Terminal Railroad Association and the fourteen railroad companies, within sixty days thereafter, to submit a plan for the reorganization of the contracts, agreements, arrangements and leases, and the use and operation of the properties and terminal facilities of the defendants, between the Terminal Railroad Association and its fourteen co-defendant railroads, which would make the contracts conform to the terms and conditions therein recited.

Counsel for the Government insisted then, and now insists, that the interlocutory order should require the Terminal Railroad Association, the fourteen railroad companies, defendants, **and the Government** to submit a plan of reorganization, etc.; that this court meant both complainant and defendants when it said:

> "That a decree be there (District Court) entered directing the parties to submit to the court, within ninety days after receipt of mandate, a plan for the reorganization of the contract between the fourteen defendant railroad companies and the Terminal Company, which we have pointed out as bringing the combination within the inhibition of the statute."

The Government contends that the words "the parties" in the foregoing quotation from the special di-

rections of this court meant the Government, the party plaintiff, as well as the parties defendant, and that inasmuch as it has not agreed with the defendants upon a plan of reorganization of the contracts as required, a decree of dissolution must go in accordance with the final clause of the special directions of this court.

This, we think, is a misapprehension of the meaning of the word "parties" in the quoted text. The parties there referred to are the parties to the agreement between the Terminal Association and the fourteen railroad companies. They are directed to make the changes in that agreement which the court found to be obnoxious to the law. This court adopted that obvious meaning in the prohibition case before it. It said:

> "While it is true that the mandate of this court gave certain specific directions as to the scope and character of the decree to be entered, it afforded an opportunity **to the defendants to submit a plan in order to carry out that decree and gave to the United States an opportunity to be heard in opposition to that plan** and left to the court a serious and important duty to be discharged in any event and especially in case of controversy on the subject."
>
> (226 U. S., *l. c.* 425.)

The interpretation of this court in the prohibition case of its specific directions concerning the decree is manifestly and obviously the proper interpretation of that clause of its specific directions.

II.

Present Terminal Charges Are Justified by Reason and Authority.

The fifth special direction given by this court on the former hearing is this:

> "Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use

of the terminal facilities in respect of traffic originating within the so-called one hundred mile area, that is not equally and in like manner applied in respect of all other traffic of a like character originating outside of that area."

In the interlocutory order of the Circuit Judges, sitting in the District Court, the Fifth specification reads as follows:

"Fifth. By providing for the abolition of any special or so-called arbitrary charge for the use of the terminal facilities in respect of traffic originating in the so-called one hundred mile area that is not equally or in like manner applied in respect of all other traffic of like character originating outside of that area."

The only difference between the interlocutory order of the Circuit Judges and the direction of this court consists in the use of the word "in" instead of "within" in the phrase "in the so-called one hundred mile area," and the use of the word "or" instead of the word "and" in the phrase "that is not equally or in like manner." The final decree followed the language of the direction of this court.

Counsel for the Government insists that this court did not mean what it said in the Fifth clause, and that the Circuit Judges were in error in following this specific direction of this court. Counsel insists that this court meant by its decree that no distinction in traffic charges should be made between St. Louis and East St. Louis on either inbound or outbound traffic of any description whatsoever; that St. Louis should be entitled to precisely the same rate of charges on traffic from the east as East St. Louis or any village in the neighborhood of East St. Louis on the east side of the Mississippi River. This contention is summed up in the Fourth paragraph of the final decree proposed to the Circuit Judges for adoption, which is as follows:

"Fourth. It is ordered and decreed that the defendants herein and any existing or future railroad company acquiring a joint ownership in or right to use the terminal properties now held or hereafter acquired by the defendants are hereby enjoined from and shall **not make a special or so-called arbitrary charge** (commonly known as 'the arbiry') **upon traffic destined to St. Louis, Missouri, points beyond**, or originating in St. Louis, Missouri, or passing through St. Louis, Missouri, or the St. Louis railway gateway to points beyond **for the use of and transportation over the terminal properties and facilities** the defendants now own or may hereafter acquire, between the **termini of the proprietary railroads** of said Terminal Association in St. Louis, Missouri, East St. Louis, Granite City, Madison, Venice, and Brooklyn, Illinois, nor between the termini of the proprietary railroads of said Terminal Association in the territory of the St. Louis railway gateway in the States of Missouri and Illinois.

And it is ordered that in the transportation and handling of traffic by the defendants the cities and towns of St. Louis, Missouri, East St. Louis, Illinois, Madison, Granite City, Venice, and Brooklyn, Illinois, and the territory in the St. Louis railway gateway **shall be treated by the defendants as to rates charged, service supplied, and facilities furnished as one common commercial and business centre,** and the cities and towns above named herein and the territory of the St. Louis railway gateway shall be, as to traffic, **treated as the St. Louis business district, and one and the same rate for transportation of persons and property shall be charged to and from each of the above-named cities and towns and to the territory designated as the St. Louis railway gateway.**

And it is ordered and adjudged that **no different or greater rate be charged by defendants for traffic destined to St. Louis, Missouri, than is charged for similar traffic destined to East St. Louis, Madison, Venice, Granite City, or Brooklyn, Illinois, or any**

other point in the territory designated as the St. Louis railway gateway; and that no greater or different rate be charged for traffic destined to East St. Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, or any other point in the territory designated as the St. Louis railway gateway than is charged for similar traffic destined to St. Louis, Missouri; that no different rate be charged upon traffic originating in St. Louis, Missouri, than is charged for similar traffic originating in East St. Louis, Venice, Granite City, Madison, or Brooklyn, Illinois, or any other point in the territory known as the St. Louis railway gateway; that no different or greater rate be charged upon traffic originating in East St Louis, Madison, Granite City, Venice, or Brooklyn, Illinois, than is charged upon traffic originating in St. Louis, Missouri, it being intended by this decree to prevent discrimination in the handling of interstate commerce by defendants either in favor of or against St. Louis, Missouri, East St. Louis, Madison, Granite City, Venice and Brooklyn, Illinois, or any other point in the territory now or hereafter designated as the St. Louis railway gateway.

Delivery shall be made at any point upon the said terminal tracks in any of the above-named cities or towns to which traffic may be billed. And defendants are hereby forever enjoined from handling traffic above mentioned except as herein indicated."

To which is added at the close of the Fifth paragraph of the decree presented by counsel for the Government, the following proviso:

"Provided nothing herein shall be construed to prevent the said Terminal Railroad Association from making a proper switching charge for services performed after traffic has been finally delivered to the point of destination to which it was billed in either of the above-named cities or towns or at any point in the territory now or hereafter designated as the St. Louis railway gateway."

To illustrate by example the meaning of this: Take

two carload shipments from New York, of exactly the same class of freight, one destined to East St. Louis and the other destined to St. Louis. The contention is that the charges for the transportation of the car to any side-track or station on the lines of the Terminal Association in St. Louis should be no greater than on the car transported to East St. Louis, although the shipment to St. Louis must cross one of two very expensive bridge structures over the Mississippi River and be carried a further distance of fifteen to twenty miles. Reckoning the cost of either the Eads Bridge or the Merchants Bridge at the average assessment of railroad trackage for purposes of taxation (a method adopted by the Interstate Commerce Commission in East Dubuque Supply Co. v. Illinois Central Railroad Co.) would add to the already greater distance to St. Louis approximately two hundred and fifty miles.

In East Dubuque Supply Co. v. Illinois Central Railroad Co., 28 I. C. C. 425. the Commission, in determining whether a rate of 5 cents per pound for the transportation of beer, in carload lots, from Dubuque Iowa, to East Dubuque, Illinois, was unreasonable, said this.

> "The special bridge fare for passengers across the Dubuque bridge was before us in Railroad Commissioners of Iowa v. I. C. R. R. Co., 20 I. C. C. 181, in which we refused to condemn a fare of 30 cents as reasonable. Excerpts from the record in that case were incorporated in the record in this case. We there found that the States of Illinois and Iowa had assessed the bridge for purposes of taxation at $1,864,048.00; and the evidence in this case is that the property of the Illinois Central in Iowa and Illinois is assessed for purposes of taxation at about $28,000.00 per mile. We said in that case that by reason of the great cost of such structures, a bridge has been regarded more or less generally as

adding a constructive mileage to the carrier's line. See also Edwards & Bradford Lumber Co. v. C., B. & Q. R. R. Co., 25 I. C. C. 93. Dividing the valuation placed upon the bridge by the assessed valuation of defendant's line in Iowa and Illinois, it appears that such valuation represents the assessed value of 66½ miles of line.

Under the distant scale prescribed by the State of Iowa, the fifth class rate for 6 miles is 5.2 cents, and for 5 miles or under, 4.9 cents. The traffic in this case involves two switching services besides the use of the bridge. No explanation is given of the forces that operated to depress the rates across the bridges at Clinton, Davenport and Sabula below the rate of defendant, and nothing has been presented in this case to show that those rates should have greater weight in determining the reasonableness of the rate under attack here, if comparisons alone were to govern, than higher rates at other crossings. The fact that there is a lower switching rate on excelsior wood is not sufficient to establish that the rate on beer is unreasonable. The complaint must be dismissed. It will be so ordered."

The court will further note this draft of decree submitted by the Government provides that shipments from the east must be billed through to any side track of the Terminal Association in St. Louis, and that neither the Terminal Association, nor the railroads for it, are entitled to charge for the haul from East St. Louis to St. Louis on such shipment until after it shall have reached its routed destination; then, and then only, if the car is moved at the instance of the consignee, the Terminal Association may make a switching charge—not otherwise.

We insist that this court meant what it said in the Fifth paragraph of its special directions to the District Court, and that it had capacity to express, and did express, what it meant, and that the language used is not susceptible of any such construction as is thus placed upon it by the Government.

It will be seen that the proposal of the Government is to definitely fix a schedule or rates both for outgoing and incoming traffic as between St. Louis, on the west side, and East St. Louis, on the east side of the Mississippi River, and without regard to modifying conditions or distances.

The first obvious objection to such a decree is that this court has no jurisdiction to establish for railroads schedules of charges.

The second is that conditions and circumstances which enter into the reasonableness of a rate are not before this court in this case so that it could with any sort of justice formulate a schedule of rates.

And the third: That the reasonableness of the individual tariffs of the fourteen proprietary railroad companies was not reviewed by the bill or the evidence and was not intended to be adjudicated upon by this court.

III.

This Court Could Not, and Did Not, Attempt to Fix Rates in Its Opinion.

In reviewing the special decree ordered by this court we have been almost persuaded that it doubted its jurisdiction to make the order contained in the Fourth paragraph concerning the billing of traffic to East St. Louis, and the Fifth paragraph, which we are now considering, concerning the discriminating application between the one and two hundred mile area and that area beyond. This impression is emphasized by the Seventh paragraph, which says:

> "Seventh. To avoid any possible misapprehension, the decree should also contain a provision that nothing therein shall be taken to affect in any wise or at any time the power of the Interstate Commerce Commission over the rates to be charged by the Terminal Company, or the mode of billing traffic

passing over its lines, or the establishing of joint through rates or routes over its lines, or any other power conferred by law upon such Commission."

If this Court had jurisdiction, it had the power to make a decree final, conclusive and unreviewable by any tribunal. A decree upon its face subject to collateral annulment by a non-judicial commission is not a judicial judgment. If the matters treated of in these two paragraphs of the decree, as the decree itself concludes, were within the exclusive jurisdiction of the Interstate Commerce Commission, then they were without the jurisdiction of this Court.

This doctrine is so well settled that it is hardly necessary to cite authorities upon the same. We do, however refer to the case of

Texas and Pacific Ry. Co. v. *Abilene Cotton Oil Co.*, 204 *U. S.* 426;

B. & O. R. R. Co. v *Pitcairn Coal Co.*, 215 *U. S.* 481;

Robinson v. *B. & O. R. R. Co.*, 222 *U. S.* 506;

Morrisdale Coal Co. v. *Penn. R. R. Co.*, 230 *U. S.* 304;

Mitchell Coal Co. v. *Penn. R. R. Co.*, 230 *U. S.* 247;

Pennsylrania Railroad Co. v. *International Coal Co.*, 230 *U. S.* 184.

In the Morrisdale Coal Company case, *supra*, it is said:

"Without preliminary action by the Interstate Commerce Commission, declaring that the carrier had, by the rule adopted in regard to distribution of cars, discriminated against a shipper in such distribution, the federal courts have no jurisdiction of a suit by such shipper for damages alleged to be occasioned by undue discrimination against him and undue preference in favor of his competitor."

It has seemed to us that the Court had effectively protected against all possibility of restraint of trade and monopoly which might arise from the unification of the then terminal systems by providing for the reformation of the contract between the Terminal Association and the proprietary companies, as in the First, Second and Third paragraphs, relating respectively to the admission of all railroad companies to co-proprietorship, for the equal use of such companies as do not wish co-proprietorship, and the limitation of all covenants in the contract restricting proprietary lines to the use of the terminals.

In drafting its decretal direction concerning this subject, this Court seemed to have had in mind the provisions of Section 3 of the Elkins Act, as amended, namely:

> "That whenever the Interstate Commerce Commission shall have reasonable ground for belief that any common carrier is engaged in the carriage of passengers or freight traffic between given points at less than the published rates on file, or is committing any discriminations forbidden by law, a petition may be presented alleging such facts," etc.,

and not those provisions of Section 7 of the Interstate Commerce Act, as amended June 18, 1910, concerning the rate to be charged for terminal facilities and the regulations applicable to terminal facilities, which are within the exclusive jurisdiction of the Interstate Commerce Commission.

But if the Court had jurisdiction in this proceeding to pass upon the reasonableness of tariff rates, it would adopt in such ascertainment the rules usually applied by the Interstate Commerce Commission.

The question recurs: **Is St. Louis entitled to the same schedule of charges on shipments from and to the east as East St. Louis, as is contended by the Government?**

It is conceded that East St. Louis is nearer to the east than St. Louis. There are no natural barriers to be overcome, at an enormous expense, between East St. Louis and the east, while between St. Louis and the east the Mississippi River intervenes, and to cross it by rail expensive bridges were constructed, at a cost equivalent to two hundred and fifty miles of ordinary railroad.

The Interstate Commerce Commission, in accordance with the letter of the Interstate Commerce Act, has held that "in the absence of other influential conditions, distance may be fairly considered a controlling element in fixing reasonable rates." (Freight Bureau, etc., v. Cincinnati, etc., Ry. Co., 7 Inter, Com. Rep., p. 191.)

That Commission has had frequently to adjudicate upon parallel cases to this, where communities were separated by natural barriers. A complaint was brought by the Commercial Club of Omaha (Commercial Club of Omaha v. Railroads, 7 Interstate Com. Rep. 386), asserting a discrimination against Omaha, and in favor of Council Bluffs, in the respect that, upon certain freights from and to Omaha, bridge tolls were added for the passage over the bridge between Omaha and Council Bluffs.

There, the contest was between the business interests of two cities—the business interests of Council Bluffs having been permitted to intervene. Here, East St. Louis is not represented, while special counsel for the Government presses with great zeal the importance of the business interests of St. Louis.

The Commerce Commission thus stated the contention of Omaha, which corresponds exactly with the contention here made by the Government's counsel for St. Louis. It said:

"It is insisted that the defendant carriers should be required to give Omaha the same rates as Council Bluffs on shipments to and from Iowa points; and this demand is made under the provision of Section 3 of the Act to Regulate Commerce."

After answering this demand as predicated upon usage and upon general contract and upon special contract, the Commission proceeded as follows: ,

"A somewhat more serious question is presented by the further charge of complainant that 'the discrimination against Omaha operates to the serious detriment of the business interests of that city.' It is quite obvious that Omaha dealers must sell goods to Iowa customers at the same prices as their Council Bluffs competitors; and since the latter has some advantage in rates to Iowa points, the former must be content—other things being equal—with smaller profits on Iowa business. Is this an injustice to Omaha merchants? Their shipments to Iowa towns require a greater service from the carriers than is performed for Council Bluffs merchants, for they are hauled a greater distance and over an extensive bridge. The charge for this extra service is admitted to be reasonable, and those for whom it is performed cannot justly complain because it is not gratuitously rendered. Independent of the fact that rates in other directions are the same from both places, and judged solely by the conditions affecting transportation into Iowa, it would seem entirely proper to exact somewhat higher rates on traffic from Omaha. The two cities are not, in fact, one community, even in their commercial relations. They are situated in different states and upon opposite sides of a wide river which is a natural obstacle to easy communication between them. The defendant which constructed the bridge over this river, and the defendants which have leased the right to run their trains across it, are *prima facie* entitled to some compensation for their outlay. Doubtless the Omaha dealers would find their Iowa trade more lucrative if they were relieved from any charge

for the bridge service which they receive, but is that of itself any reason for sustaining their demand?"

To the same effect are:

Freight Bureau, etc., v. *Cincinnati, etc., Ry. Co.*, 7 *I. C. C.* 191;

Chamber of Commerce of Newport News v. *Southern Ry. Co.*, 23 *I. C. C., l. c.* 352;

East Dubuque Supply Co. v. *Illinois Central Railroad Co.*, 28 *I. C. C.* 425;

Railroad Commissioners of Iowa v. *Illinois Central Railroad Co.*, 20 *I. C. C.* 181;

Edwards & Bradford Lumber Co., v. *C. B. & Q. Railroad*, 25 *I. C. C.* 93.

It has been said as an illustration that the rate from Kansas City to St. Louis is the same as to East St. Louis, or vice versa. This is true as a railroad rate, but the controlling condition that makes it is—that the Chicago and Alton Railroad Company only reaches St. Louis through East St. Louis, and the principle there applying was early declared in the case of Commercial Club of Omaha v. Railroads, 7 Interstate Com. Rep. 386, quoted *supra.*

A like observation is to be made of the case cited by the Government of Lumbermen's Exchange, etc., v. Anderson, etc., R. R. Co., 24 Interstate Com. Rep. 220, in which a like interpretation of the rule is stated.

The individual tariff sheets of the railroad companies were not before the Court for review either by charge or evidence. They were brought into the case merely as shareholders of the Terminal Association. Other means and other tribunals are provided by law for the rectification of any unjust, unreasonable or discriminatory practices upon the part of railroad companies, and these tribunals are constantly dealing with and adjusting

such matters where neither monopoly nor restraint of trade is charged.

In conclusion upon this point we beg to observe that somehow and from some source, perhaps by inference from what was said in the brief of counsel for the Government, this Court had the impression, not definite, that **an arbitrary** rate was charged **by the Terminal Company** for the use of its facilities upon traffic which originated within a certain territorial zone that was not charged for like traffic originating without that zone. This Court was proposing to prevent by the Fifth paragraph of its special directions, as if the Interstate Commerce Commission had petitioned it to prevent, in the future any discrimination in the charges made **by the Terminal Company for its facilities** as between the two zones—zones not either in East St. Louis or St. Louis, or any town in what counsel calls the St. Louis gateway—but one within one hundred miles of East St. Louis and the other without this one hundred mile area. No such discriminatory charge has been made since the beginning of this suit, or is made now, for the use of the **facilities of the Terminal Railroad Association.** The Court was very apt in the language it employed to define precisely what is meant—that it was a discrimination in the charge for the use of the terminals, that is, an abatement of the charge for the use of the terminals between the one hundred mile zone and the zone without the one hundred miles, and there can be no inference from the language used by the Court which would justify an understanding that it intended to place St. Louis and East St. Louis upon the same traffic basis by this paragraph of its special directions. The principal subject of this provision is the abolition of an arbitrary charge, not the reasonableness of the charge—an arbitrary charge for the use of something, to-wit: the terminal facilities of the Terminal Railroad

Association. To what is the abolition of that charge directed? The answer is: In respect of traffic originating within the one hundred mile area. Is this charge to be entirely abolished? No—only in so far as a charge is applied in discrimination on traffic originating within the one hundred mile area that is not in like manner applied in respect of all other traffic of a like character originating outside of that area. This paragraph of the decretal order of this Court relates only to traffic originating within two zones and requires the abolition of the arbitrary charge in respect of one zone that is not in like manner applied to the other zone. If the arbitrary applies alike to the traffic originating in both zones, the order of this Court is fulfilled.

The language of this Court cannot be so construed as to require an absolute equality as between East St. Louis and St. Louis on all traffic charges that may be in force upon any or all of the lines of the proprietary companies. We beg to re-affirm that the record reveals no definition of the arbitrary charge. The charges of the Terminal Railroad Association for the services rendered by it, we again beg to affirm, are universally applied to all traffic in whatever zone it may originate and from whatever source it may be carried. Within certain zones, the railroad companies, whether proprietary or non-proprietary lines, assume this charge and pay it to the Terminal Railroad Association, but they absorb it in their rates. As to some carriages within the shorter distances, they cannot afford to absorb it. At other distances they may absorb a part, and at still greater distances they may absorb the whole of the charge of the Terminal Association in their rate.

Again, that this Court did not mean to fix the same rates to St. Louis as to East St. Louis, is clearly inferable from the fact that non-proprietary railroads were not made parties to the litigation. As to non-proprie-

tary lines, this Court could make no effective order, and consequently non-proprietary roads, which, as an illustration, carry two-thirds of the coal to the St. Louis markets, are wholly outside of the purview and operation of the decree of this Court as thus interpreted. This interpretation would at once establish a diversity of charges between the proprietary and non-proprietary lines, and make the proprietary lines charge a rate from the coal mines to East St. Louis that would justify them in absorbing the charges for the further haul from East St. Louis to St. Louis and delivery upon the terminal tracks of the Terminal Railroad Association.

There is no question but that the Terminal Railroad Association has the right to make a reasonable charge for the services performed by it in hauling coal from the East St. Louis connections to the west side switching district and making deliveries there.

This Court, in the case of Southern Railway Co. v. St. Louis Hay & Grain Co., 214 U. S. 297, held that the railroad company had the right to make a charge for that service that not only covers the cost, but also produces a reasonable profit, and this is approved in the case of the Interstate Commerce Commission v. Stickney, 215 U. S. 98. In this latter case this Court announces the proposition peculiarly pertinent in this case—that although the railway company owned all of the stock of the Terminal Company, yet the Terminal Company was entitled to make a distinctive charge for the services which it rendered in the transportation and a reasonable profit upon the same. This Court there said:

> "The sixth section of the act known as the 'Hepburn Act' (an act to amend the Interstate Commerce Act, passed on June 29, 1906, c. 3591, 34 Stat.) 584, requires carriers to file with the Commis-

sion and print and keep open to inspection schedules showing, among other things, 'separately all terminal charges * * * and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates.' By section 15 the Commission is authorized and required, upon a complaint, to inquire and determine what would be a just and reasonable rate or rates, charge or charges. This, of course, includes all charges, and the carrier is entitled to have a finding that any particular charge is unreasonable and unjust before it is required to change such charge. For services that it may render or procure to be rendered off its own line, or outside the mere matter of transportation over its line, it may charge and receive compensation. Southern Railway Co. v. St. Louis Hay Co., 214 U. S. 297. If the terminal charge be in and of itself just and reasonable it cannot be condemned or the carrier required to change it on the ground that it, taken with prior charges of transportation over the lines of the carrier or of connecting carriers, makes the total charge to the shipper unreasonable. That which must be corrected and condemned is not the just and reasonable terminal charge, but those prior charges which must of themselves be unreasonable in order to make the aggregate of the charge from the point of shipment to that of delivery unreasonable and unjust. In order to avail itself of the benefit of this rule the carrier must separately state its terminal or other special charge complained of, for if many matters are lumped in a single charge it is impossible for either shipper or Commission to determine how much of the lump charge is for the terminal or special services."

Again, on page 108, the Court says:

"The Union Stock Yards Company is an independent corporation and the fact, if it be a fact, that most or even all of its stock is owned by the several railroad companies entering into Chicago does not makes its lines or property part of the

lines or property of the separate railroad companies."

The Commission has recognized the right of a separate charge to be made for terminal facilities in the case of Detroit Switching Charges, 28 I. C. C. 494.

IV.

The Proposed "Standardized Contract" of the Government Would Be Burdensome and Inefficacious.

This Court directed the contract between the Terminal Association and the proprietary railroad companies to be reformed so as to permit any other railroad company who wished to become a member and shareholder of the Terminal Association on "such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies;" and also to give non-members the right to use the terminals of the Terminal Association upon "such just and reasonable terms and regulations as will in respect of use, character and cost of service place every such company upon nearly an equal plane as may be with respect to expenses and charges as that occupied by the proprietary companies."

The agreement between the Terminal Association and the proprietary companies as reformed in accordance with the directions of this Court and the interlocutory order of the Circuit Judges in the two respects above mentioned reads as follows:

> "(a) That in case any other railroad company, not named as second party hereto, shall hereafter desire to become a member of the Terminal Railroad Association of St. Louis, it may become a member thereof, with equal rights of joint ownership and control of the combined terminal prop-

erties of said association, upon such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens of the parties hereto of the second part.

(b) That any other railroad company not electing to become a joint owner as above provided, but desiring the use of the terminal facilities of the Terminal Railroad Association of St. Louis, may enjoy the use thereof upon such just and reasonable terms and regulations as will in respect of use, character, and cost of service place it upon as nearly an equal plane as may be, with respect to expenses and charges, as that occupied by the proprietary companies.

(c) It is further agreed that in case of any disagreement between any company applying to become a joint member, owner, or user, as herein provided for, and the terminal company or proprietary companies, which shall hereafter arise, the same may be submitted to the District Court of the United States within and for the Eastern Division of the Eastern District of Missouri upon a petition filed in a certain cause in said court, entitled 'The United States of America versus the Terminal Railroad Association of St. Louis, *et als.*, No. 5250, Equity Docket,'' but any judgment or decree that may be entered therein shall be subject to review by appeal or writ of error in the usual manner.' ''

The final decree of the Circuit Judges adopts in the very words paragraphs (a) and (b), but incorporates a brief method of procedure in case of disagreement in lieu of paragraph (c). Paragraph (c) as amended by the final decree is as follows, viz.:

"(3) Any dispute or controversy which shall hereafter arise between any railroad company applying for joint ownership or use of the said terminal properties and the owning proprietary companies shall be submitted to the United States

District Court for the Eastern Division of the Eastern District of Missouri by filing a petition in this cause setting out specifically the facts upon which the said parties have disagreed, and the party so filing said petition shall at least fifteen (15) days before so doing so serve the other party to the controversy with a copy of the petition proposed to be filed, together with a notice that said petition will be filed on a certain designated day. Thereupon the matter shall be placed upon the docket of the United States District Court for the Eastern Division of the Eastern District of Missouri, and shall be heard when called in its regular order on said docket, and the proceedings shall be subject to review by appeal as in any other cases. Upon being advised by the filing of a petition of such dispute or controversy the Court may at once admit the applying company to ownership or use of the terminal facilities during the pendency of the proceeding upon the giving of security in amount and form as it may direct."

As before said, no exception was made by the Government to the plan. It, however, submitted a form of final decree in which it set forth "**Standardized Contracts**" for companies desiring to become members, also those merely desiring the use of the terminals, which should be embodied, as we understand counsel for the Government, as a substantive part of the reformed agreement. We understand, and so did the Circuit Judges, that this Court merely meant to have those respective rights of membership and use written into and recognized by the reformed contract, leaving the details, when the right came to be exercised, to be worked out by the parties, upon the basis of the standards and conditions stipulated.

The **standardized contracts** submitted by the Government will be found on pages 78 to 82 of the record.

The failure of the Circuit Judges to adopt this stand-

ardized contract is assigned as error. Whether such standardized contracts contain "such just and reasonable terms as shall place such applying company upon a plane of equality in respect of benefits and burdens with the present proprietary companies," this record as it now stands contains no token. If the parties cannot agree upon such just and reasonable terms as shall place the applying company on a plane of equality in respect of benefits and burdens, then the matter shall be presented to the District Court for adjudication. This seems to be the reasonable view entertained by this Court when it ordered that modification of the contract. We have not sufficient facts at hand to be able to express any opinion whatsoever as to that matter. The record in this case was shaped to no such end, and we do not believe that this Court in the condition of the record upon this subject will feel justified in ordering any standard contract. The standardized contract as presented does not any more dispense with future litigation than the clear announcement of the principle of right made by this Court in its decretal order. It introduces many things by way of recital not heretofore adjudicated by this Court. It leaves any disagreement as to the proportion of the use by the applying company and the present proprietary companies to adjudication, as well as the payment to be made for such use, and ultimately leaves the basis of compensation and use to the judgment of the Court.

We respectfully submit that no such standardized agreement was contemplated by this Court by the terms of its decree ordering a reformation of the agreement between the Terminal Association and the proprietary companies.

We submit that the record is now—that the Terminal Association and the proprietary companies have never

failed to agree on the terms of admission of any company that desires to become a co-proprietor under the agreement of October 1st, 1889, and no non-proprietary company has ever complained of the use accorded it of the facilities of the Terminal Association. They have always heretofore been accorded the right to become stockholders of the Terminal Association, with the same rights as the proprietary companies, and the non-proprietary companies have, according to the testimony of Mr. Ramsey, been accorded not only an equal use, but their business has received more attention than that of the proprietary companies.

V.

The Modification of the Final Decree Asked by the Terminal Railroad Association.

If we correctly understand the distinction which the first paragraph of the final decree makes between **"terminal business"** and "transportation" business, the Terminal Association is forever prohibited from accepting traffic to be conveyed from one point on its line to another point on its line over its own tracks. It is true this business is not very large, but it is, nevertheless, important, not, however, so much so to the Terminal Association as to the industries on its lines which do considerable and important interchange of business. Mr. Perkins estimates this as about ten per cent of the total business of the Terminal Association.

For instance: The Terminal Company operates passenger cars mornings and evenings to accommodate the workmen going from their homes in St. Louis to the factories and workshops at Granite City, Venice and East St. Louis. Mr. Sarber testified this was done in

the interests of certain labor organizations. (Rec., pp. 445-459.)

We do not believe that this Court meant that industries on the lines of the Terminal Association should be subject to any such inconvenience and be remitted to the old drayage method for the interchange of their business with each other.

During the year 1913, the Terminal Association handled 30,584 loaded cars of such traffic, for 521 shippers. It is true this business is not profitable to the Terminal Association, but is of immense advantage to business interests on its lines.

These are incidents to the principal business of the Terminal Association, and we submit the prohibition of this service was not in the contemplation of this Court in its decretal order.

Respectfully submitted,

H. S. PRIEST,

T. M. PIERCE,

Solicitors for Appellees.

APPENDIX.

EXHIBIT "A."

AGREEMENT BETWEEN THE TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS AND THE SEVERAL PROPRIETARY COMPANIES.

This agreement, made this first day of October, in the year Eighteen Hundred and Eighty-nine, between the TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS, as first, party, and the MISSOURI PACIFIC RAILWAY COMPANY, the ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY, WABASH RAILROAD COMPANY, the TERRE HAUTE & INDIANAPOLIS RAILROAD and the ST. LOUIS, VANDALIA & TERRE HAUTE RAILROAD COMPANY (representing one interest, Vandalia line), the OHIO & MISSISSIPPI RAILWAY COMPANY, the CLEVELAND, CINCINNATI, CHICAGO AND ST. LOUIS RAILROAD COMPANY, and the LOUISVILLE & NASHVILLE RAILROAD COMPANY as second party (said companies being hereinafter designated as "proprietary" companies, and each covenanting for itself alone and for no other company whatever),

BEARS WITNESS:

WHEREAS, The first party has, at the instance and request of the several proprietary companies obtained, by purchase, lease, assignment of lease and otherwise, the properties heretofore belonging to the Union Railway & Transit Company of St. Louis and of East St. Louis; also to the Union Depot Company of St. Louis; also to the St. Louis Bridge Company and the Tunnel Railroad of St. Louis, to the end that said properties may be held in per-

petuity as a unit, and developed and improved in the interest of the proprietary companies for the purpose of furnishing adequate facilities in St. Louis and East St. Louis; and,

WHEREAS, The several proprietary companies do now wish to secure in proper form and in perpetuity a right to use said terminal properties of the first party now held and hereafter to be acquired.

Therefore, it is agreed between the parties as follows:

I.—In consideration of the covenants and payments hereinafter stipulated to be performed and paid by the proprietary companies, severally but not jointly, the first party hereby grants to each of the proprietary companies, its successors and assigns forever, a right of joint use with each other and with such other companies as may be admitted as proprietary lines to joint use thereof, of all said terminal properties of the first party now held or that may be hereafter acquired in St. Louis, Missouri, and East St. Louis, Illinois, including herein the St. Louis Bridge and Tunnel for passenger and freight, express and mail business, and for interchange of the same between each other and with the public, it being understood that the right herein granted to each proprietary company is not transferable to any extent whatever, but is to remain as an appurtenant to the railroad now owned by each proprietary company.

II.—The first party agrees to procure, as soon as practicable, additional real estate and construct thereon, at the place or places where the same shall be found most expedient, a new union passenger station, also freight station or stations, additional main and side tracks, switches and turnouts, wherever the same may be necessary, suitable in size and location and manner of construction, also to perform promptly and efficiently the

work of receiving, delivering and transferring all passenger and freight traffic of the several proprietary companies at St. Louis and East St. Louis and of other railroad companies which may be hereafter, under the terms of this agreement, admitted to a joint use of said terminal properties. And the right of joint use of such additional structures and improvements whenever the same shall be acquired by the first party is hereby granted in perpetuity to the several proprietary companies, the same as in respect to properties now in possession and hereinbefore fully described.

III.—In consideration of the foregoing each of the proprietary companies, for itself only and not for others, accepts the right of joint use hereinbefore granted by the first party and hereby covenants and agrees that it will forever make use of the bridge and terminal properties of the first party, as above described, for all passenger and freight traffic within its control through, to and from St. Louis and destined to cross the Mississippi River at St. Louis, and pay therefor as herein provided.

IV.—The directors of the first party shall be eight in number, the same to consist of one representative from each proprietary company, which number may be increased if new proprietary lines are admitted. And there shall be an additional representative at large to be chosen by all the proprietary companies, such representative shall be appointed President of the Board of Directors.

The Board of Directors shall prescribe all rules and regulations in respect to the use, control and operation of said terminal system and every part thereof. They shall, through their Executive Committee, appoint all officers, agents, chiefs of departments, prescribing their duties, and they shall organize the service in the way most conducive to the best interests of the Association

and the public. They shall, from among their number, appoint an Executive Committee of three, who shall serve for one year, or until their successors are elected, which committee shall have such power as the Board may delegate to them in the by-laws.

V.—It is agreed that such rates of toll or charges for the use of the bridge, depots, and other properties of said terminal system shall, subject to provision of Article 13, be fixed from time to time by the first party as will produce a sum sufficient each year to pay the following, which sums the said proprietary companies, each for itself and for its proportion or amount, hereby agrees to pay, viz.:

1. Rental due to the Bridge and Tunnel Companies under the lease heretofore described, as follows:

Interest on Bridge Bonds	$350,000
Dividend on Bridge Company first preferred stock	149,400
Dividend on Bridge Company second preferred stock	90,000
Dividend on Tunnel Railroad capital stock	75,000
To maintain corporate organization of Bridge and Tunnel Companies	2,500

2. Interest on all outstanding 4½ per cent bonds of the first party.

3. Dividends on such bonds or preferred stock, not now contemplated, but that may become necessary to be issued hereafter for the purpose of future extensions and betterments to the property of the first party.

4. All taxes and assessments, premiums of insurance, rentals on leaseholds and expenses of every kind incurred in the maintenance, operation, repair and renewal of said terminal system and every part thereof.

5. A sum of money, not exceeding two thousand dollars in any one year, to pay whatever expenses may be legitimately incurred in maintaining the corporate organization of the first party, and of any other company or companies whose creation and organization may be-

come necessary in order to fully accomplish the object desired in the reorganization of said terminal system.

VI.—As the current revenues derived from the tolls and rentals are to be applied toward meeting the fixed charges and expenses of operation and maintenance, above specified, and it being the intention that the Executive Committee shall always regulate said tolls, charges and rentals, so as to meet the fixed charges, interest and operating expenses, it is understood that no call shall be made upon the proprietary lines to contribute toward the payment of any such charges and expenses unless by reason of extraordinary decrease of traffic or other temporary unforeseen circumstances there should not be in the treasury, at the time of the maturing of any of the coupons of the Bridge and Tunnel rentals, a sum sufficient to meet the same promptly on the day when due.

In such case, and upon a resolution of the Board of Directors certifying to such a deficiency, each proprietary line shall be assessed for its proportion of such deficiency, based upon the number of proprietary companies using said depot, and drafts from the Treasurer of the first party (which drafts shall be made payable fifteen days after sight), to the amount of such assessment shall be made upon each of said proprietary lines for its said proportion, which drafts shall be promptly paid, and thereafter the tolls shall be so adjusted as to yield revenue sufficient to reimburse the companies which have made such advances, with interest thereon.

VII.—In order that the expenses incident to the maintenance and operation of said terminal system may be distributed as equitably as possible, so as to have each class of traffic bear its proper proportion, the system shall be divided into three departments: The Union Depot Passenger Department, the Bridge

and Tunnel Transportation Department (which shall also comprise the upper or wagon roadway), and the General Freight Department. The Union Depot Passenger Department shall comprise the passenger station and buildings, the sheds, storage yards, and all the grounds and tracks designated for and occupied by passenger coaches running into and out of said depot. The Bridge and Tunnel Department shall comprise the movement and transportation of all freight and passenger traffic across the bridge and through the tunnel, the supervision and taking care of engines and rolling stock, roadbed, structures, machinery, interlocking and signal apparatus, shops and buildings, and also the supervision and governemnt of the upper or wagon roadway traffic. The General Freight Department shall comprise the freight yards, warehouses, stations, offices and bureaus in St. Louis and East St. Louis, the receiving, delivering and forwarding of freight, the billing thereof, and the collection of all transfer and other charges thereon. All other subdepartments shall, under the direction of the Board of Directors, be subordinated to one of these chief departments. The Board shall appoint one Superintendent for each of these departments, and there shall be one General Superintendent or General Manager, under whose supervision the entire system shall be managed.

VIII.—For the purpose of securing a proper division of accounts between the passenger and freight service, the Board of Directors of the first party shall, from time to time, establish and declare the territory, tracks, yards, buildings and stations for the maintenance and operating expense of which the passenger traffic shall be chargeable, and shall also declare and determine the proportion of the fixed charges assumed by the party of the first part, which, in addition to the expense

of operation and maintenance, shall be borne by the railroads using said passenger depot department. Such expenses and fixed charges shall be apportioned on a wheelage basis, and with such modifications as the Board may, from time to time, prescribe. For the proportion of each company using the passenger depot, drafts shall be made on the 15th day of each month, for the proportion of expense and the pro-rata of fixed charges accrued during the previous month. Delinquents shall be dealt with as the Board of Directors may prescribe.

The balance of the fixed charges shall be defrayed out of the net earnings derived from the tolls and revenues of the bridge and tunnel and from all the various sources appertaining to it. The freight tolls shall cover the handling of freight billed to East St. Louis, and turned over to the bridge for St. Louis delivery and all track deliveries, but should stations be established in St. Louis for local, and in East St. Louis for through freight, to which stations the several lines bill direct, the expenses of such stations, including interest on the cost thereof, shall be paid by the roads using them, on a tonnage basis.

IX.—In additions or betterments whatever shall be made to said terminal system which will require the issue of stock, or bonds, or contributions from proprietary companies using said terminal system otherwise than as hereinbefore provided for, except with the consent of three-fourths of the directors of the first party.

X.—In case of the partial or total destruction by fire or other cause of any part of said terminal system, the same shall be rebuilt or replaced under the direction of the first party, and the cost thereof in excess of insurance money that may be received shall be borne by the

proprietary companies using said terminal system on the basis herein prescribed for the several systems respectively, the same to be computed during the period of one year next preceding the casualty resulting in such destruction, or at the option of the Board of Directors the necessary funds for such rebuilding or replacement shall be obtained by the issue of additional securities of said Terminal Association.

XI.—All claims for damages growing out of injury or loss to person or property while on any part of the terminal system, and caused partially or wholly by any employe of the first party, shall be paid by the first party and charged to the account of maintenance and operation of the terminal system. But if such injury or loss shall be caused exclusively by an employe, or through the fault of one or more of the companies using said terminal system, claims arising therefrom shall be paid by the company which causes such injury or loss.

XII.—The General Managers or other chief officers of the companies using the passenger depot, in conjunction with the Superintendent thereof, shall establish the time for departure and arrival of their respective trains, and each company shall receive equal and impartial privileges in the use of said terminal system.

XIII.—If either company using said terminal system, or any part thereof, shall at any time make default in the payment of either of the payments herein stipulated by it to be paid, or in the performance of any obligation herein stipulated to be performed by it, and such default shall continue for the space of thirty days after notice and request to pay or perform, in that event at the option of the first party, but not otherwise, all rights of such party in default to the use and enjoyment of any part of said terminal system, whether by

virtue of this agreement or otherwise, shall at once cease and determine; and such defaulting company shall and will surrender and yield to the party or parties not in default undisturbed and peaceable possession of said entire terminal system and every part thereof, and in the event of either of the said companies retiring from said premises in default as aforesaid or otherwise, it is agreed that the company or companies remaining in occupancy of said terminal system will pay, in the manner provided in paragraph VI, its proportion of the deficiency arising out of such default; but such defaulting party shall, notwithstanding such re-entry, still be liable in damages to the said party of the first part, and to each of said proprietary lines for all damages sustained by reason of its default; provided, however, that the total gross sum which any one of the proprietary companies parties hereto shall be called upon to pay as provided in section VI, in any one year toward making up any deficit in the net earning, to meet the fixed charges shall not in any one year exceed one-seventh of one million dollars, which last named sum is in excess of the entire fixed charges assumed under this agreement, and provided further, that the tolls to be levied on traffic as contemplated in this agreement shall at no time be so great as to place any proprietary company using said terminals at a disadvantage in respect to its traffic that be in competition with that of other lines.

XIV.—The first party agrees that it will cause the corporate existence of the Union Depot Company and of the Union Railway and Transit Company of East St. Louis and of the Terminal Railroad of East St. Louis, to be maintained in case counsel shall deem the same necessary, and that each of said companies shall exercise its franchises solely for the benefit of the first party. All of the capital stock of these companies as

purchased by the first party shall express on the face of the certificates thereof that it is the property of said first party, and that it is not to be alienated from its owner, except that portions of it may be transferred to individuals to qualify them as directors and inspectors of elections under the law; but such stock so issued shall express upon its face that it is transferable only back to the company.

XV.—All subordinate officers, agents and employes engaged in the operation of the terminal system, or any part thereof (not including herein the general officers), shall be subject to removal on request in writing of either of the companies using the same, made to the Executive Committee and for good cause shown.

XVI.—Neither the first party nor any of its officers, agents or employes shall, in the operation of said terminal system, discriminate in any manner whatever in favor of any company in respect to the use of the same or any part thereof, or in respect to the transfer or handling of cars, and each of the said companies shall in all respects have equal facilities and accommodations with all other companies now or hereafter using said terminal system, except as to the special stations assigned to special lines, as provided in paragraph VIII.

XVII.—Neither party hereto shall sell, assign, transfer or underlet the rights and privileges hereby granted, or any of them, to any other company or companies without the unanimous consent of the Board of Directors of the first party.

XVIII.—If at any time a difference of opinion shall exist in respect to the rights or duties of any company using the terminal system under this agreement, or under the rules which may be adopted or terms and conditions which may be prescribed by the Board of

Directors, the question in dispute shall be referred to a Board of Arbitrators, consisting of three competent disinterested persons, one of whom shall be chosen by the party making complaint, and the other by the President of the first party, and the two so chosen shall select a third. The party desiring such arbitration shall give written notice of the same to the President of the first party, setting forth definitely the point or points in dispute, and name the person selected by such party to act as arbitrator. In the event that the party on whom such notice shall be served shall not, within fifteen days of said service, name a second disinterested person to act as arbitrator, the party giving such notice shall select a second, and the two thus chosen shall select a third. The Board of Arbitrators thus chosen shall proceed at once to hear, consider and determine the matters submitted to them, and shall proceed to give the party at least ten days' notice of the time and place of hearing, and at the time and place appointed shall proceed with the hearing, unless for good cause, of which the arbitrators shall be the judges, the same shall be postponed until some later day or days, and the decision of the arbitrators or a majority of them to be made in writing, and a copy thereof to be delivered to each of the parties to the dispute shall be final and conclusive upon the parties in reference to the matter so submitted.

XIX.—This agreement may be executed in counterparts, and any railroad company not named as second party hereto, may be admitted to joint use of said terminal system on unanimous consent, but not otherwise, of the directors of the first party, and on payment of such a consideration as they may determine, and on signing this agreement or any counterpart thereof thereby indicating its rights and duties in respect to

use of said terminal system to be the same and none other than the said proprietary companies named as second party hereto.

In Testimony Whereof, The parties have caused this agreement to be executed as of the day and year first above written.

[SEAL] TERMINAL RAILROAD ASSOCIATION OF ST. LOUIS.
Attest: (Signed) By WM. TAUSSIG, President.
JAS. HANNA, Secretary.

[SEAL] MISSOURI PACIFIC RAILWAY COMPANY.
Attest: (Signed) By JAY GOULD, President.
A. H. CALEF, Secretary.

[SEAL] ST. LOUIS, IRON MOUNTAIN AND SOUTHERN RAILWAY COMPANY.
Attest: (Signed) By JAY GOULD, President.
A. H. CALEF, Secretary.

[SEAL] WABASH RAILROAD COMPANY.
Attest: (Signed) By O. D. ASHLEY, President.
J. C. OTTESON, Secretary.

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No. 566.

Office Supreme Court, U. S.
FILED
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JAMES D. MAHER
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

THE UNITED STATES, APPELLANT AND RESPONDENT,

vs.

ST. LOUIS TERMINAL RAILROAD ASSOCIATION, APPELLANT AND RESPONDENT.

MOTION OF EVENS & HOWARD FIRE BRICK COMPANY AND UNION SAND & MATERIAL COMPANY FOR LEAVE TO INTERVENE IN SAID COURT.

GEORGE M. BLOCK,
JOHN F. LEE,
Solicitors for Intervenors.

No. 567.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1914.

THE UNITED STATES, APPELLANT AND RESPONDENT,

vs.

ST. LOUIS TERMINAL RAILROAD ASSOCIATION, APPELLANT AND RESPONDENT.

MOTION OF EVENS & HOWARD FIRE BRICK COMPANY AND UNION SAND & MATERIAL COMPANY FOR LEAVE TO INTERVENE IN SAID COURT.

Now come Evens & Howard Fire Brick Company, hereinafter styled the "Brick Company," and Union Sand & Material Company, hereinafter styled the "Sand Company," and move this Court for leave to file herein their intervening petition, and that if this motion be granted, the following may be taken as their intervening petition filed herein by leave, and that the statement, brief and argument filed by them

in this court in cause No. 567 entitled Evens & Howard Fire Brick Company and Union Sand & Material Company vs. The United States may be taken as if filed by them in support of this motion and for cause of said motion state that they are corporations organized and existing under the laws of Missouri, having their chief places of business in the City of St. Louis in said State. That in the year 1908 the Brick Company built, and has since maintained, and is now operating, a fire brick plant in the County of St. Louis, Missouri, on the line of the above named defendant, at a cost of Five Hundred Thousand Dollars ($500,000) for the manufacture of fire brick and other kindred products; that the output of said factory is in value about Five Hundred Thousand Dollars ($500,000) per annum, and this petitioner states that it employs at its said plant 250 persons and at its mine, hereinafter mentioned, 50 persons; that the Brick Company requires for the conduct of its business large quantities of fire clay; that it has secured a tract of land on the line of said defendant five (5) miles distant from its said plant, from which it has a right to obtain, and can obtain, sufficient supplies of fire clay to operate its said plant at its full capacity for twenty (20) years; that it has no other supply of fire clay; that the same cannot be bought in the market, and your petitioners know of no source at present from which fire clay could be obtained for its work except from said mine, unless at prices which would be so high, or conveyed to said plant by methods other than railroads, which would be so costly as to be prohibitive.

Your petitioners state that said Brick Company has purchased and is about to put into operation a number of cars in which fire clay is to be loaded at said mine, carried thence over the switch at said mine to the main tracks of said defendant and moved over said tracks by defendant to the said switch at the plant of the Brick Company and over said switch to its works, and there unloaded of said clay and the empty cars returned in the same manner to said mine, said cars being in number and capacity sufficient to carry all the fire clay needed to supply said plant when in operation. That heretofore, and before said purchase, the clay used by said Brick Company has been moved in cars belonging to railroads other than said Association between the points and in the manner above mentioned, and said cars when emptied were either returned to said mine for reloading with fire clay or sent elsewhere. That, in order to supply said plant with fire clay, it will be necessary that there should be so moved over said line into said plant from said mine not less than two thousand loaded cars per year. That the movement of said cars from said mine to said plant would be wholly over the lines of said defendant and would not be in any way competitive with any other railroad as to rates or otherwise, and is wholly Intrastate and that neither said mine nor said plant is reached by any other railroad. That without said supply of clay said plant of the Brick Company would be valueless and could not be operated at its present position; that its wreckage value would not exceed Ten Thousand Dollars ($10,000.), being most-

ly underground conduits, which would be entirely destroyed, and brick work, which would be valueless, if removed.

Your petitioners state that said Sand Company is engaged, among other things, in digging and dredging sand out of the Mississippi River, and is the largest producer and dealer in building materials in the City of St. Louis; that it has an elevator plant at the foot of Tyler street, in said city, on the banks of the Mississippi River, at which point sand is elevated from barges into an elevator and loaded into cars and thence shipped in cars to all points in the City of St. Louis; that this plant represents an investment of over Sixty Thousand Dollars ($60,000.00), and that it owns and operates 200 cars in connection with the operation of said plant; that it has, and maintains, a yard in the northwestern part of the city, for supplying sand to the northwestern part of the City of St. Louis, which plant is located on the Natural Bridge Road on the tracks of the Terminal Railroad Association, and which plant represents an investment of more than Twenty-five Thousand Dollars ($25,000.00). Said Sand Company also keeps and maintains a plant at Bremen Avenue, in the City of St. Louis, on the tracks of the Terminal Railroad Association, from which it supplies sand to the northern part of the City of St. Louis. This plant also represents a large investment.

Petitioners say that the elevating plant at Tyler Street, and the yard at Bremen Avenue are located on what was originally the Wiggins Ferry Company tracks and were so located when the Wiggins Ferry

Company was an independent company and in no wise connected with the Terminal Railroad Association.

Petitioners say that during the year 1913 said Sand Company shipped from the Tyler Street yards to the Natural Bridge Road yards, to the Bremen Avenue yards and to various industrial concerns located on the tracks of the Terminal Railroad Association, all in the City of St. Louis, 3379 cars of sand; that all of said shipments so made by it during the year 1913 from the Tyler Street Elevator plant to the Natural Bridge Road yard, to the Bremen Avenue yard, and to said industrial plants, and amounting to 3379 loaded cars, were shipments over the Terminal Railroad Association of St. Louis, which were moved from the initial point, to-wit, the Tyler Street Elevator plant to the point of delivery, entirely over the rails and lines of the Terminal Railroad Association of St. Louis, each of said cars being as a matter of fact a movement from one point on the line of the Terminal Railroad to another point on the line of the Terminal Railroad, the entire movement from the initial point to the delivery point being on the tracks of the Terminal Railroad Association; and being entirely intrastate movements; that there is no other available location to which it could remove its elevator plant which is now located at the foot of Tyler Street; that on the 2nd day of March, 1914, in the above-entitled cause, this Court entered a final decree and that Section 1 on Page 2 of the said final decree reads as follows:

> "The defendants are therefore perpetually enjoined from in any wise managing or conducting the said Terminal Railroad Association or any of

its constituent companies, and from operating any of the properties belonging to it or its constituents, *otherwise than as terminal facilities for the railroad companies using the same.*"

Said section of said decree further provides that the Terminal Railroad Association may continue as a lawful unification of terminal facilities "*upon abandoning all operating methods and charges as and for railroad transportation* and confining itself to the transaction of a terminal business *such as supplying and operating facilities for the interchange of traffic between railroads.*" Petitioners say that giving this language a general construction the Terminal Association would thereby be enjoined and prohibited from performing any of the services for your petitioners above set forth, for the reason that giving the language of the decree a literal construction, such handling and moving of cars from the Sand Company's Tyler Street plant, or from the Brick Company's mine to its plant, and return of said cars when empty, is not "*an interchange of traffic between railroads*" and might be held and construed to be "*the doing of business as railroad transportation.*"

Petitioners say that at no time did either of them have any knowledge or information that any such question was involved in this proceeding, or that any question of the legality of the movement of the traffic of either of these petitioners from one point on the Terminal Association tracks to another was involved, and that the first information either of them received as to the nature and terms of the final decree, as entered in said cause, was obtained from the public

press which called attention to the same on or about the 1st or 2nd of April, 1914.

Petitioners say that a very grave and irreparable injury would be done to each of them if, by the terms of the decree entered in this cause, the Terminal Railroad Association were precluded and enjoined from continuing to move the products of the Tyler Street plant of the Sand Company to other points on the system of the Terminal Railroad Association, and especially to the points mentioned herein, to-wit, Bremen Avenue, Natural Bridge Road yard, and industrial plants at other points on the system of the Terminal Association, and from continuing to move the clay of the Brick Company from its mine to its said plant, or to move the empty cars of the Brick Company from said plant to said mine.

Petitioners say that they are informed that the Terminal Railroad Association has filed in the above-entitled proceeding a motion to modify Article 1 of the said final decree, and has attached to said motion an exhibit showing the various persons and corporations whose situation in regard to certain service over the Terminal Railroad Association is like unto that of your petitioners, and which exhibit shows the number of cars moved by the Terminal Association during the year 1913 for said various persons and corporations where the movement required like service to that hereinabove set forth as being done and required for your petitioners.

Your petitioners state that whilst it appears by said exhibit that the cars moved in the year 1913 for said

Brick Company were only 470, that the rate at which cars are now being moved for said Brick Company by said Association in the manner mentioned is 2,000 cars per annum, which rate, your petitioners are informed and believe will continue hereafter to be largely increased, if permitted by this Court.

This exhibit shows that 521 industries, including these petitioners, are similarly situated on the lines of the Terminal Railroad Association, and that the total number of cars moved by the Terminal Railroad Association for these various industries from one point on its line to another point on its line, the entire service therefor being performed over the Terminal's own lines, for the year 1913 was 30,584 cars of which there were moved for said Sand Company 3,379 loaded cars from the Tyler Street plant to the Natural Bridge Road yard, the Bremen Avenue yard, and to various industrial concerns located on the tracks of the Terminal Railroad Association in the City of St. Louis, in addition to which there were moved for said Sand Company 805 loaded cars during the year 1913 by said Terminal Railroad Association from one point on the said Terminal line to other points on the said Terminal line in East St. Louis, and making the entire number of loaded cars so moved for said Sand Company by the Terminal Railroad Association for the year 1913, 4,184 cars, and being about 14% of the total cars moved by the Terminal Railroad Association for the year 1913 for all parties similarly situated as was said Sand Company. Your petitioners say that none of said business embraced in the movement of said 4,184 cars, so moved for said Sand Company, and none of

the business so moved for said Brick Company by the Terminal Railroad Association, was competitive with any railroad constituting one of the proprietary lines in said Terminal Railroad Association, or with any other railroad and was wholly intrastate.

Wherefore, the premises considered, petitioners pray that the final decree heretofore entered in said cause may be so altered, amended or changed as not only to permit the Terminal Railroad Association to continue performing such services for your petitioners by moving their said cars from one point on the lines of the Terminal Railroad Association to other points on the lines of the Terminal Railroad Association, even though the moving thereof from said initial point to said delivery point be entirely over the lines of the Terminal Railroad Association, but also petitioners pray that said decree may be made so clear and plain that petitioners and others similarly situated as are petitioners may be entitled to demand and require of the Terminal Railroad Association the moving of cars from one point on the line of said Terminal Railroad Association to other points on the lines of said Terminal Railroad Association within what is known as the switching limits of St. Louis and East St. Louis, even though the moving of said cars be entirely over the lines of the Terminal Railroad Association; and that petitioners and others similarly situated may be placed in a position where such duty on the part of the Terminal Railroad Association may be enforced by them, should such service be at any time declined or refused by said Association.

And petitioners further pray that they may be permitted to appear in this proceeding and to be heard in this cause by this Court, either as intervenors appearing herein by order of this court under Equity Rule 37 or Section 5 of what is known as the Anti-Trust Act, or else that they may, in view of the vital interest which they have in the form of the decree to be entered herein, both as individuals and as members of the general public, be permitted to be heard in this proceeding by their counsel acting as amici curiae.

George Bland
John F. Lee
Solicitors for Intervenors.

State of Missouri,
City of St. Louis,—ss.

On this 8th day of October, 1914, before me personally appeared Cecil D. Gregg, who, being first duly sworn, did say: I am the president of the Evens & Howard Fire Brick Company, a corporation, and, as such, have personal knowledge of the matters and facts stated and set forth in the foregoing motion; and affiant says that the matters and facts stated and set forth in the foregoing motion are true.

Subscribed and sworn to by Cecil D. Gregg before me, this 8th day of October, 1914.

_____

Notary Public.

My commission expires_____

State of Missouri,
City of St. Louis,—ss:

On this 8th day of October, 1914, before me personally appeared Harry L. Block, who, being first duly sworn, did say: I am president of the Union Sand & Material Company, and, as such, have personal knowledge of the matters and facts stated and set forth in the foregoing motion; and affiant says that the matters and facts stated and set forth in the foregoing motion are true.

_____

Subscribed and sworn to by Harry L. Block before me this 8th day of October, 1914.

_____

Notary Public.

My commission expires_____